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IN THE

SUPREME COURT OF THE UNITED STATES

1957-1958 Term

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| Henry Merritt Farnum, |
| Petitioner |
| v. |
| State of Connecticut |
| and |
| State of New York, |
| Appellees |

MOTION TO CONSOLIDATE AND

TO ASSIGN FOR HEARING,

PETITION FOR WRIT OF MANDAMUS, and

BRIEF IN SUPPORT THEREOF.

Henry Merritt Farnum,
Petitioner

70 W. 46th Street,
New York 36, New York

IN THE

SUPREME COURT OF THE UNITED STATES

| | | |
|---|---|---|
| Henry Merritt Farnum, Petitioner | * | |
| v. | * | No. Misc. |
| State of Connecticut, and | * | |
| State of New York, Appellees | * | |

MOTION TO CONSOLIDATE AND TO ASSIGN FOR HEARING

1. On January 30, 1958, plaintiff filed in this Court by mail his Motion To Docket the above-entitled action. That motion by its terms was directed to two petitions, one for mandamus, and the other for certiorari under Rule 23 (5) of this Court, each consolidating the two cases above. This Court has not ruled on that motion, and the Clerk has not docketed the action.

2. By letter of February 4, 1958, the Clerk of this Court declined to docket that action without a motion by plaintiff which would have admitted that such docketing is discretionary under the Constitution of the United States.

3. Plaintiff's letter of February 17, 1958 advised

that he would file his brief on that issue, annexed hereto as Exhibit S-I.

4. The footnote on page 2 of that Petition for Certiorari refers to the above proceeding as having issues in common with the case moved for consolidation therewith by this motion, Farnum v. International Association of Machinists, D.C.N.Y., S.D., Civil No. 129-88, complaint filed January 21, 1958 and dismissed by judgment of that Court filed March 17th.

   Plaintiff's Petition For A Writ of Mandamus in that case is annexed and hereby designated as Exhibit S-III.

5. The original Petition For Mandamus presents issues in common with those of the instant case: four issues as to relief under the Civil Rights Act of 1957, and five issues as to the growth of human rights under the Ninth Amendment of the Constitution of the United States. Please note "Questions Presented", p. 7 (IAM); and cross-indexing to the original Petition, for example on pages 19, 21-24, 26-27, and 31-32 of the I.A.M. Petition.

Plaintiff therefore moves as follows.

A. That Farnum v. International Association of Machinists be consolidated with the above-entitled cases.

B. That all issues of all cases thus consolidated, be argued at substantially the same time, under Rule 43 (5) of this Court.

C. That Petitions and cases thus consolidated be

limited to a single docketing fee and a single fee upon argument under Rule 52 (a) of this Court, such single fee including all relief, such as relief by mandamus and relief by certiorari.

D. Under Rule 43 (4) of this Court, that such argument be calendared two weeks after the period for filing of briefs by opposing counsel, in view of the importance of the issues and the previous delay in docketing.

Respectfully,

Henry Merritt Farnum,
Petitioner

70 W. 46th Street,
New York 36, New York.

April 5, 1958

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MEMORANDUM OF LAW

IN SUPPORT OF MOTION

I. The highest achievement of a charter of liberties, is justice--the way to decide truth, in an issue of human rights. Such is the name and the law of the Great Charter.[1]

A. The individual's right to that justice is the first principle of peace, where truth makes might.[2]

---

[1] In 1215 A.D., the "...people...resolved to oblige the King to grant them their liberties, and to promise the same should be observed, which King John did in Running-mead...by...Charta Libertatum, the Charter of Liberties (the form of which you may read in Math. Paris, fol. 246, and is in effect the same with this here recited)..."

Henry Care, English Liberties Or The Free-Born Subject's Inheritance. Providence, R.I.: John Carter, printer, 1774, 6th Ed., p. 8.

[2] "We will sell to no man, we will not deny or defer to any man, either justice or right." From Chapter XXIX, Magna Charta; Care, Providence, R.I., op. cit., p. 21; reprinted infra, Exhibit S-II, p. M-10 (IAM).(In other drafts Ch. XXIX is numbered 40, or 47: Ed.)

Footnote 2 continued next page.

I. B. Failing that first principle, no other principle receives justice.

1. Justice does not succeed by its decision in the self-evident case. Such a case will survive the most arbitrary abuse of discretion, even totalitarianism.

2. That is why the petition, of right, was our Constitutional birthright in 1776 and in 1791.[3]

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[2] (Continued)

In 1774, Providence, R.I., Care, op. cit., pp. 25-26, "These words have been excellently expounded by later acts of Parliament, that by no means common right, or common law, should be disturbed or delayed; no, though it be commanded under the great seal, or privy seal, order, writ, letters, message or commandment whatever, from the King or any other; and that the Justices shall proceed, as if no such writs, letters, order, message, or other commandment, were come to them; all our Judges swear to this; for it is part of their oaths...."

[3] Care, op.cit., pp. 21-22, comment on Chapter XXIX:

"...These words deserve to be written in letters of gold...they being so essential to our English freedom and liberties, and because my Lord Coke, in the Second part of his Institutes, has many excellent observations on this chapter: I shall recite his very words."

.... (Footnote continued next page)

II. Each great moment of progress has been man's rediscovery of enduring truth in its modern setting.

A. The Great Charter in 1215 A.D. was thus understood on the very day of its birth.[4]

---

[3] (Continued)

(p. 26) Justice or right. We shall not sell, deny or delay, justice or right; neither the end, which is justice, nor the mean, whereby we may attain to the end, and that is the law....

....

2. The law is called rectum, because it discovereth that which is crooked or wrong...."

[4] In 1215 A.D., of the people, by the people:

"...these are not properly the concessions of Kings, but affirmations of the common law, and ratified by the suffrages of the people, who claimed them as their rights and privileges, and as their birthright...." Care, op. cit., p. 6.

In 1215 A.D., for the people:

Magna Charta, "Chapter I. A Confirmation of Liberties.

...We have granted also, and given to all the freemen of our realm, for us and our heirs for ever, the liberties underwritten, to have and to hold to them and their heirs for ever."
Care, op. cit., p. 10

(Footnote continued next page)

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[4] (Footnote continued)

In 1215 A.D., a rebirth for the people.

"...this charter is, for the most part, only declaratory of the principal grounds of the fundamental laws and liberties of England; no new freedom is hereby granted, but a restitution of such as lawfully they had before, and to free them of what had been usurped and encroached upon them by any power whatsoever; and therefore you may see this charter often mentions sua jura, their rights, and libertates suas, their liberties, which shows they had them before, and that the same now were confirmed...." Care, op. cit., pp. 7 and 8.

In 1689 A.D., a rebirth of the people.

Comment on "Bill of Rights--Declaration of Rights of the People of England".

"The moment that the Declaration of Right was made on the behalf of the English people, and acknowledged by the prince of Orange and his consort as the Supreme law, in future to be observed; at that instant the constitution became renovated, the power of the crown was acknowledged to flow from its only natural source, the people....the offspring of this connexion is the genuine RIGHTS OF MAN, which, apart from all visionary theories, confer happiness, content and brotherly affection upon its votaries." Luffman, John, The Charters of London Complete; also Magna Charta, and the Bill of Rights. London, 1793, pp. 421-422.

II. B. Our founding fathers, in their current literature of 1776 and 1791, knew that they witnessed a rebirth.[5]

III. Discretionary leave, as a condition to petition for mandamus,[6] is an erroneous condition.

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[5] See the colonial library on human rights of 1776: Columbia Law Review, January, 1917, Vol. 17, pp. 19-20, Hazeltine, H.D., "The Influence of Magna Carta On American Constitutional Development"; including Care, op. cit.; 5th Edition, 1721, one of the first seven books printed in America.

[6] Rule 31 of this Court, "The petition in any proceeding seeking the issuance of a writ by this court authorized by 28 U.S.C. sec. 1651 (a) or 28 U.S.C. sec. 2241 shall be prefaced by a motion for leave to file such petition...."

In Farnum v. Connecticut and New York, letters to plaintiff from Clerk of this Court:

Jan. 29, 1958 "...under Rules 21 and 31 these papers should have been printed. To avoid the necessity of printing these documents, it is suggested that you forward forty copies of a short motion for leave to dispense with such printing....All of these papers will be held pending further advice from you...."

Feb. 4, 1958, "'Photo offset' printing has not been regarded by the Court as compliance with the Rules requiring 'printing' of papers unless a motion to accept such process in lieu of printing is submitted for the Court's action...."
(Footnote continued next page)

III.A. The Ninth Amendment[7] of the U.S. Constitution protects the filing of this Petition by right, not by leave.

B. Therefore leave to file the instant Petition is neither annexed, nor incorporated by reference.

C. Under our Constitutional heritage this petition for mandamus is filed to be heard of right, and any contrary rule is invalid under the Ninth Amendment.

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6 (Continued)

Please note plaintiff's Motion To Docket in this case, received by the Clerk of this Court on February 3, 1958.

7 The Ninth Amendment: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

## CHAP. XXVII.

*Tenure of the King, in Socage, and of another by Knight's Service. Petit Serjeanty.*

IF any do hold of us by fee-farm, or by ſocage, or burgage, and he holdeth lands of another by Knight's ſervice, we will not have the cuſtody of his heir, nor of his land, which is holden of the fee of another, by reaſon of that fee-farm, ſocage or burgage. Neither will we have the cuſtody of ſuch fee-farm, ſocage or burgage, except Knight's ſervice be due unto us out of the ſame. We will not have the cuſtody of the heir, or of any land, by occaſion of any petit ſerjeanty that any man holdeth of us by ſervice, to pay an arrow, or the like.

## CHAP. XXVIII.

*Wager of Law ſhall not be without Witneſs.*

NO Bailiff, from henceforth, ſhall put any man to his open law, nor to an oath, upon his own bare ſaying, without faithful witneſſes brought in for the ſame.

## CHAP. XXIX.

*None ſhall be condemned without Trial: Juſtice ſhall not be ſold or deferred.*

NO freeman ſhall be taken or impriſoned, or diſſeized of his freehold, or liberties, or free cuſtoms, or be outlawed, or exiled, or any otherwiſe deſtroyed; and we will not paſs ſentence upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will ſell to no man, we will not deny or defer to any man, either juſtice or right.

### NOTES.

*No freeman ſhall be taken, &c.* Theſe words deſerve to be written in letters of gold, and I have often wondered that they are not inſcribed in capitals, in all our Courts of *Judicature*, *Town Halls*, and moſt

EXHIBIT S-III

PETITION FOR WRIT OF MANDAMUS, and

BRIEF IN SUPPORT THEREOF.

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NO. 717 MISC.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF MANDAMUS TO THE

UNITED STATES DISTRICT COURT, SO. DIST. NEW YORK

| | |
|---|---|
| Henry Merritt Farnum, Petitioner | |
| v. | U. S. Dist. Court, SDNY |
| International Association of Machinists, Appellee | Civil No. 129-88 |

Each of the rulings and orders of the District Court at hearing on notice, cited herein on pages 3 and 4 (IAM), "Citations To Orders of District Court", should be corrected by this Court by writ of mandamus.

The authority of this Court to issue that writ, and the effect of the orders to be corrected, are outlined herein under "Jurisdiction", pages 5 and 6 (IAM).

Plaintiff contends that each of those rulings and orders constitutes an abuse of judicial power with the result of defeating this

Court's appellate jurisdiction, in a manner not remediable through ordinary appeal. That result is analyzed on page 26 (IAM) under "Impairment of Jurisdiction of This Court".

Wherefore petitioner prays:

1. That a writ of mandamus issue from this Court directed to the following Judges of the United States District Court for the Southern District of New York: Hon. William B. Herlands, Hon. Archie O. Dawson, Hon. Edward Weinfeld, and Hon. E. J. Dimoch. That the writ require each Judge to show cause on a day to be fixed by this Court why mandamus should not issue from this Court directing each of said Judges to vacate and expunge from the record each ruling, order and judgment denying plaintiff's application for appointment of a three-judge Court, and dismissing the complaint.

2. That petitioner have such additional relief and process as may be necessary and appropriate in the premises.

Respectfully submitted,

Henry Merritt Farnum,
Petitioner

## CITATIONS TO ORDERS BY DISTRICT COURT

Three events during negotiation of a new contract between the defendant Union and plaintiff's employer, the Kollsman Instrument Company, deprive the plaintiff of his rights protected by the Ninth Amendment of the United States Constitution.

The Constitutional issues raised by each of those three events relate (1) to the new contract recently in negotiation, and (2) to the negotiation of future contracts thereunder.

At the time of each of those three events plaintiff moved on notice for appointment of a three-judge Court to adjudicate the respective issue. Each of the three motions on notice was preceded by plaintiff's application to the respective Judge in chambers, for relief pending hearing on notice.

Each of the three Judges endorsed his orders on the moving papers. Those orders are not reported. They are reprinted chronologically infra, starting on page C-1 (IAM). All proceedings herein were in the United States District Court for the Southern District of New York.

| Event # | U.S.D.J. | Date of Order (1958) |
|---|---|---|
| 1 | Hon. William B. Herlands | Jan. 21 |
| | | Jan. 28 |
| 2 | Hon. Archie O. Dawson | Feb. 6 |
| | | Feb. 13 |
| 3 | Hon. Edward Weinfeld | Feb. 21 |
| | | Feb. 26 & Mar. 1 |

At hearing on notice March 6, plaintiff moved before Judge E. J. Dimoch for a stay pending this Petition, and defendant moved for summary judgment dismissing the complaint. The resulting order and judgment, Opinion No. 24190, was filed March 17.

## JURISDICTION

The first event is defendant's undemocratic conduct of the meeting of the membership of the defendant Union on January 19, 1958. At that meeting the Negotiating Committee's recommendation of 12 days for negotiation before any strike, was cut to 2 days. Plaintiff was there deprived of his right to make his proposal on the issues, although he is a member of the Union.

The second event is the defendant's failure on January 22, 1958 to submit the Company's last offer before the strike to impartial vote by the membership of the Union.

The third event is the imminent execution of a contract between the defendant and the Company. That contract deprives plaintiff, and all persons similarly situated, of Constitutional rights (1) as a consequence of the first two events complained of, (2) by failing to provide protection in the new contract against the same events in future negotiations, and (3) by subjecting the plaintiff to the invalid terms and conditions of the Constitution of the International Association of Machinists.

In each of those three events the defendant acts under the authority of statutes of the United States, to deprive the plaintiff of rights protected by the Ninth Amendment of the Constitution of the United States.

At the time of each of the three events plaintiff moved on notice, under 28 USC, sections 2281, 2282, and 2284, for appointment of a

three-Judge Court to hear the respective issue, and to order an injunction. Such appointment is in each instance denied by the single judge.

Plaintiff then moved for a stay pending this Petition for appointment of a three-Judge Court. By Opinion No. 24190 the single judge denied plaintiff's motion, and granted summary judgment dismissing the complaint.

The result is to impair the appellate jurisdiction of this Court under 28 USC, section 1253.[1]

The jurisdiction of this Court is invoked under 28 USC, section 1651 on "Writs".[2]

Therefore a writ of mandamus is the correct remedy.[3]

---

[1] 28 USC, sections 1253 and 2281, reprinted in original Petition, p. A-4.

28 USC, section 2282, reprinted infra, p. A-1 (IAM).

All page references to Petition in the upper right hand corner of any page of this document, are to plaintiff's original Petition for Writ of Mandamus, dated January 18, 1958 and received by the Clerk of this Court on January 29, 1958 in Farnum v. Connecticut and New York.

[2] Reprinted in original Petition, p. 4.

[3] Original Petition, pp. 23-24, "3. Impairment of Jurisdiction of this Court".

## QUESTIONS PRESENTED

Plaintiff's purpose in this Petition is to get to trial on the merits of the following important issues of human rights, and related issues of fact in this case.

In a democracy, what are the constitutional rights of an employee to influence and to vote on the terms of his employment contract in a Union Shop? What right does he have to persuade his fellow-employees? What right to an impartial, secret ballot by the membership on the Company's last offer before a strike? What right to present proposals for pay based upon the merit system? What right to challenge the defendant's unconstitutional regulation of each of those freedoms? What right to adjudication of those freedoms by federal Courts?

Plaintiff's original Petition to this Court presented five practical criteria to guide the development of human rights.[4]

Those same five questions are presented in the instant case. The specialized pursuit is Labor-Management, rather than Medico-Legal. The constitutionality of federal statutes, in addition to state statutes, is here in issue.

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[4] Petition, "Reasons For Granting the Writ", subdivisions numbered 1 to 5, pp. 16-32; also pp. 33-34.

## CONSTITUTIONAL DOCUMENTS AND STATUTES INVOLVED

The Constitutional documents involved are the Ninth Amendment to the Constitution of the United States, and the Declaration of Independence.

The complaints are brought under USC, Title 28, section 1343, as amended by the Civil Rights Act of 1957, Part III, sec. 121; under USC, Title 42, sections 1983 and 1985; and under other statutes, as hereinafter more fully appears.

Plaintiff challenges the constitutionality of the Labor Management Relations Act, 29 USC, sections 159 (a) and (f), and 173 (c); and other statutes, as appears in the record.

Other statutes in issue also are listed by title and citation in the Index, supra.

## STATEMENT

Plaintiff's purpose in this Petition, is to get to trial on the merits of the important issues of human rights, and related facts herein presented by three events in the negotiation of the new Company-Union contract.

The defendant's Constitution provides for expulsion of any member advocating or encouraging employment under the "merit...system".[1]

The authority of that contract over the plaintiff depends upon federal statute, the Labor Management Relations Act.[2]

Under the new Company-Union contract, the plaintiff is subjected to that Constitution of the defendant as a condition of employment at his trade in a Union Shop. Defendant's Constitution blocks review of those issues by this Court.[3]

The negotiation of that new contract was the occasion for three events. At a regular meeting of the defendant in the course of those events in negotiation, plaintiff attempted to advocate and encourage the merit system in the

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[1] Constitution of International Association of Machinists, Art. J, section 6; infra, p. B-53 (IAM).

[2] 29 USC, sec. 159 (a) and (f); infra, pp. A-2 and A-3 (IAM).

[3] Art. K, sec. 14; infra, p. B-56 (IAM).

new contract.

The defendant barred the plaintiff in that effort,[4] and negotiated the new contract which perpetuates that bar as a condition of plaintiff's employment in his trade. That bar prevents any effort by the plaintiff to advocate or encourage the merit system in any future negotiation by his sole bargaining representative. Moreover, it blocks judicial review under the Civil Rights Act of 1957, and related statutes.

The issues of unconstitutionality presented by the three events therefore extend to plaintiff's employment under the new contract just negotiated, and extend to all successor contracts to be negotiated thereunder, including the subjects currently open to negotiation.

Therefore those issues are urgent and far-reaching. Inasmuch as they properly raise issues of injunctive relief, they must be tried and adjudicated by a three-judge Court.

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[4] Exhibit VII, infra, p. B-22 (IAM).

Contrast the following cases cited in Opinion No. 24190, infra, p. C-9 (IAM).

SEC v. Otis & Co., D.C.N.D.O., E.D., 18 F. Supp. 100, 1936; affd. 106 F.2d, 579. Held: injunction a proper remedy, although illegal acts ceased when plaintiff raised the issue, and suit not filed until 2 months later.

San Francisco Lodge No. 68 of I.A.M. v. Forrestal, 58 F. Supp. 466, 1944. A class suit on behalf of the members of a Union Local. The defendant's only actions on the issue had thus far been decided in favor of the plaintiff.

Event #1. 48 hours for negotiation.

On January 19, 1958, the membership of the defendant Union met at the Jamaica Armory, Jamaica, New York, for decisions on contract negotiations between the defendant and the Company. The previous contract had expired the 1st of January.

At that meeting, when recognized by the presiding officer, plaintiff attempted to present a proposal which in his judgment was reasonably adapted to resolve the deadlock between the defendant and the Company, and which was consistent with the Negotiating Committee's recommendation of further time for negotiation.

On that single issue the defendant then violated plaintiff's rights under the Ninth Amendment to the United States Constitution, in five ways.[5]

Plaintiff also challenges that meeting as undemocratic in numerous other actions.

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[5] Plaintiff's Exhibit II, infra, item 10 starting on page B-11(IAM) outlines the five violations. Item 11 reprints the text of plaintiff's proposal on teamwork incentives and profit sharing.

For further details, see Second Affidavit of Plaintiff, infra, pp. B-14 (IAM)ff.

The meeting as thus conducted by the defendant rejected the recommendation of its own Negotiating Committee, cutting to 48 hours the 12 days recommended for negotiation.

The next day, January 20, plaintiff delivered to the defendant the Notice of Complaint and of Application for Restraining Order, plaintiff's Exhibit I; infra, p. B-1 (IAM).

Within the 48 hour strike deadline, on Tuesday, January 21, plaintiff moved in chambers for a restraining order pending hearing of the issues of undemocratic conduct of the meeting, including the issue of plaintiff's inability to present his proposal. The motion was denied at about 4:20 P.M.[6]

Event #2. The Company's last offer before the strike.

At 4:30 P.M. that day, January 21, the first shift finished their last day of work before the strike. The Company's last offer[7] was distributed to the first shift as they left the plant. That offer also was presented that day to the Union's Negotiating Committee. The defendant's recommendation to reject that offer

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[6] Infra, p. C-1 (IAM).

[7] Plaintiff's Exhibit III.

was distributed to the employees during the next shift,[8] and time and place of the balloting the next day was announced by the defendant.

On that next day, January 22, the balloting was cancelled by the defendant, and the strike began.

On January 27 the first meeting of the membership during the strike was held.[9]

On January 28 at hearing on notice in open Court, Judge Herlands denied plaintiff's motion for a restraining order, and denied appointment of a three-judge Court to adjudicate plaintiff's right to present his proposal at the meeting on January 19th, and to adjudicate other issues of undemocratic conduct by the defendant at that meeting.[10]

On February 7th the plaintiff served his motion to amend the complaint, and to join as defendants the Company, the Federal Mediation and Conciliation Service, the National Labor Relations Board, and the New York State Mediation Board.

Plaintiff further moved for appointment of a three-judge Court to hear plaintiff's motion for injunctive relief to enable the membership to have a fair and impartial vote on the Company's

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[8] Plaintiff's Exhibit IV, infra, pp. B-17 (IAM) to B-19 (IAM).

[9] Second Affidavit of Plaintiff, Jan. 28, 1958, p. 3; infra, p. B-16 (IAM).

[10] Infra, p. C-2 (IAM).

last offer. After denial by the Court in chambers on Feb. 6th, plaintiff's motion on notice was heard on February 13 in open Court, and again denied by Judge Dawson. Amendment of the complaint, however, was granted.[11]

Event #3. End of the 27-day strike.

Two days later, on February 15, the Union called a meeting to vote on the Company's offer of settlement.

An item-by-item comparison demonstrates that offer to be substantially identical to the one which the defendant refused to submit to a vote of the membership before the strike.[12] There are small differences which depend upon the trend in living costs, and which may make the new offer slightly lower, or slightly higher, than the Company's last offer before the strike.[13]

The membership accepted the Company offer by a voting majority of more than 2 to 1. The strike ended on February 18th, after 27 days.

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[11] Plaintiff challenges 29 USC, sec. 173(c) of the Labor Management Relations Act, as unconstitutional. Reprinted infra is the statute, p. A-4(IAM), the amended complaint, p. B-2(IAM), and the Court order at p. C-5 (IAM).

[12] Comparison between plaintiff's Exhibits IV and XXXV; infra, pp. B-17(IAM) to B-19(IAM).

[13] Exhibits, footnote 12, items marked (*).

The proposal thus submitted to the membership for balloting, limited itself to the specific provisions cited by the defendant as issues in the Company's last offer. It did not ratify the Constitution of the International Association of Machinists. It did not add any new provisions to remedy in future negotiations the events of which plaintiff complains in this case.

With the end of the strike on February 18th, "reasonable equilibrium is restored comparable to the status of negotiation last January 19th...."[14]

On February 20th, plaintiff served his motion returnable February 25th, for these four items of relief, in view of the end of the strike.

a. An injunction against the enforcement of any contract between the defendant and the Company, which as a condition of employment subjects the plaintiff to the Constitution of the International Association of Machinists. That document deprives the plaintiff of rights protected by the Ninth Amendment of the Constitution of the United States.[15] That document is given the force of law by the Labor Management Relations Act, without establishing any criteria therefor, and the statute is thereby unconstitutional.[16]

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[14] Item 5 of prayer, Amended Complaint, infra, p. B-10 (IAM).

[15] Original Petition, p. A-1.

[16] 29 USC, secs. 159(a) and (f), infra, p. A-2 (IAM).

The "Code" in Art. K of the Union Constitution is invoked by the defendant, seeking to defeat the jurisdiction of this Court.[17]

b. Joinder of the Kollsman Instrument Company, as a necessary party to this case on this issue.

c. An order for an injunction against any provision of the new contract preventing plaintiff's right to influence the membership of the defendant in a democratic manner. The Constitution of the International Association of Machinists violates the Ninth Amendment on this issue.[18]

d. Appointment of a three-judge Court to adjudicate those additional issues.

By Court orders, in each instance by a single Judge, each of the above four items of relief are denied; stay pending this petition for appointment of a three-judge Court is denied; and dismissal of the complaint is granted.[19]

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[17] For example, defendant's Affidavit Jan. 27, 1958, infra, p. B-51 (IAM). See also defendant's Third Affirmative Defense, defendant's Answer; defendant's motion for summary judgment dated Feb. 21, 1958; and Court order March 1, 1958, infra, p. C-7 (IAM).

[18] For example, Art. J, secs. 5 and 6; infra, p. B-53 (IAM).

[19] Infra, pp. C-7 to C-9 (IAM).

## REASONS FOR GRANTING THE WRIT

When a ma chooses a career in an industry with Union Shops, for example in aircraft instrument systems and in ballistic missiles,

a. does he forever surrender to the discretion of the Union, his democratic right to influence the Union's proposals in contract negotiations?

b. does he surrender his direct access to federal courts; for example under the Civil Rights Act of 1957?

What share is preserved to him by the Constitution of the United States in shaping teamwork, human rights, communications, automation, and atoms for peace, into the incentives to build America's next 20 years?

In 1776 and 1791 those rights generally arose between two individuals, the employer and employee. The employee's freedom to pursue his career, to bargain with his boss, and to protect those freedoms through the federal Courts, is a fundamental civil liberty protected by the Declaration of Independence and by the Constitution of the United States.[1]

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[1] By the Declaration of Independence, in the "pursuit of happiness". Butcher's Union v. Crescent City Company, 111 U.S. 746, 762; 28 L. Ed. 585; 4 S. Ct. 652; 1884.

By the U.S. Constitution, Amendment I.; original Petition, pp. 16-18, 30-31, and A-1.

Today the principal opportunity to pursue many such careers is limited to Companies with Union Shops. There the Union accepts a fiduciary responsibility as bargaining representative of each individual employee.

Plaintiff here asserts the violation of the foregoing human rights, in his own behalf, and on behalf of all persons similarly situated. In addition to the loss of freedom, the defendant's actions caused a daily loss shared by employees and the Company during the strike, in excess of $100,000.

The Constitutional issues are important [2] that will prevent a repetition of such losses of freedom and money under the provisions of the new contract, and in future negotiations thereunder.

This Court may notice judicially the fact that the nation now faces a battery of negotiations in basic industries, each negotiation presenting many of those Constitutional issues.

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[2] Note also on page 16 of the original Petition, under "Reasons For Granting The Writ":

"1. Constitutional Leadership in the Free World--the Ninth Amendment."

2. Civil Rights Act of 1957.

The jurisdictional issues are:

a. Jurisdiction of the subject matter;

b. Availability of injunctive and declaratory relief;

c. Necessity to exhaust Union remedies;

d. Standing to litigate on behalf of all other employees, members of defendant Union; and

e. Method of amendment of complaint.

a. Jurisdiction of the subject matter.

This case presents as subject matter, violation of civil liberties by a federal statute.[3] It presents the additional issue of such violation by the conduct of a labor Union, and by a labor Union constitution, each under authority of federal and state statutes.[4]

Civil liberties in issue are an

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[3] Labor Management Relations Act, 1947, 29 USC, sections 159 (a) and (f), and 173 (c); infra, p. A-2 (IAM).

[4] For original jurisdiction of each issue, see supra, p. 6 (IAM), and original Petition, pp. A-2, A-3, and A-5.

employee's right to influence and to participate in the democratic conduct of his Union, his right to a fair and secret ballot on the Company's last offer before a strike, and his right to a Union constitution which recognizes the supremacy of the law. Each of those civil liberties is protected by the Ninth Amendment.

The District Court erred in denying joinder of parties necessary to that subject matter.[5]

The Kollsman Instrument Company is a party to any new and future contract, with a direct or indirect requirement whereby plaintiff is subjected to the Constitution of the International Association of Machinists, as a condition of employment. The Company is directly affected by an employee's right to vote on their last offer before a strike. The Company is an indispensable party, whose rights, duties and interests will be affected by the final decree in this case.

The Federal Mediation and Conciliation Service is an indispensable party, with the relief in issue comprising an injunction against the federal statute administered by that Service.[6]

The indispensable status of the New York Mediation Board can only be determined by joinder

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[5] F.R.C.P., Rule 19 (a) and (b); infra, p. A-5 (IAM).

[6] 29 USC, secs. 172 (d), and 173 (a) and (c); infra, pp. A-3 and A-4 (IAM).

herein, or by a Court order as to the absence of jurisdiction, unless that Board itself confirms that they are without jurisdiction.

The National Labor Relations Board is either a necessary party in that its rights and duties are affected, for example in the future administration of secret ballots; or a formal party, as in Court decision as to complete relief.

The Office Employes International Union is an indispensable party. The defendant admits a mutual agreement to strike together on January 22, 1958,[7] and the office employes apparently attended and voted at the Union meeting on January 19th.

b. Availability of injunctive and declaratory relief.

Injunctive relief is requested by the complaint, and by each motion in this case, specifically within the Civil Rights Act of 1957.[8]

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[7] Plaintiff's Exhibit V comprising defendant's Strike Bulletin No. 2; infra, p.B-20(IAM)

[8] Original Petition, pp. A-2 and A-3.

Reasons, IAM; Petition, p. 21

c. Necessity to exhaust Union remedies

The original jurisdiction of district Courts under the Civil Rights Act of 1957 is further jeopardized by the defendant in this case. He invokes the constitution of the International Association of Machinists to defeat the jurisdiction of any Court.[9] That constitution provides for a trial procedure and three successive appeals, in the last stage waiting either upon a Grand Lodge Convention, or upon a referendum to the national Grand Lodge membership at large comprising 850,000 members. Violation of the Ninth Amendment by that "Code", and the unconstitutionality of the entire Grand Lodge constitution, are issues for adjudication.[10]

d. Standing to litigate on behalf of all other employees, members of defendant Union.

Class suits under Rule 23 of the Federal Rules, are consistent with labor-management laws.[11]

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[9] Defendant's Exhibit "B", Art. K; Answer, pp. 3 and 4; Affidavit In Opposition by Mr. Henry Kaltun dated Jan. 27, 1958; infra, p. B-51.

[10] Plaintiff's Exhibit XXXVIII, infra, pp. B-40 and 41 (IAM).

[11] Tisa et al. v. Potofsky et al., 90 F. Supp. 175, 1950; Ketcher et al. v. Sheet Metal Workers International, 115 F. Supp. 802, 1953.

e. Method of amendment of complaint

When a verified amended complaint presents on a certain date, with merit, the issue of defendant's failure to act, can the defendant while denying such merits in Court nevertheless correct the error, demand a second service of the amendment, and claim that the amendment was later than the defendant's correction?

The facts follow.

On February 7, 1958, plaintiff personally served on defendant an amended complaint, alleging defendant's failure to submit to the membership for balloting, the Company's final offer comprising certain provisions.

On February 8 that amended complaint, signed and verified, was filed with the Clerk, annexed to plaintiff's motion for a Court order.

On February 13 at hearing on notice, plaintiff's motion to amend was granted by the Court.

On February 14 the defendant notified all employees by telegram, of a meeting the next day to vote on a Company offer. That offer was almost identical to one subject in plaintiff's amended complaint.[12]

On February 24 the defendant alleged

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[12] Comparison between defendant's two documents, plaintiff's Exhibits IV and XXXV, infra, p. 3-17 (IAM).

that the complaint is not amended.[13]

On February 26, Judge Weinfeld at hearing in open Court ruled that his order on the motion noticed for that day, would be based upon the complaint as amended.[14]

Yet thereafter on March 5, the defendant again alleged that the complaint is not amended.[15]

The reason for defendant's disregard of two Court rulings, may be inferred from the foregoing events.

In accordance with the ruling of Judge Weinfeld on February 26, plaintiff relies upon his amended complaint served February 7, and allowed February 13.

3. Impairment of Jurisdiction of this Court.

In this case, plaintiff's application for appointment of a three-judge Court was denied with reference to the issues presented by each of

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[13] Affidavit of defendant's Attorney, by an associate, Arthur L. Galub, Esq.; page 3.

[14] Infra, p. C-7 (IAM).

[15] Affidavit by Arthur L. Galub, Esq.; page 2. Please note plaintiff's Affidavit of Feb. 24, 1958, setting forth the above facts up to that date; now designated plaintiff's Exhibit XXXVI; infra, p. B-39 (IAM).

three motions.

As to the issues of Constitutionality of federal statutes, jurisdiction of the three-judge Court is based upon 28 U.S.C., section 2282.[16]

For the reasons presented in the original Petition, only this Court has power to remedy the impairment of its appellate jurisdiction by District Court denial of plaintiff's applications for appointment of a three-judge Court.

4. Labor-Management.

This case presents the question of democratic conduct of a labor Union. Plaintiff by this Petition seeks trial of the issues. By law, such issues must be tried before a three-judge Court. Those issues relate to the new contract now going into effect, and to future negotiations under the terms of that contract.

Those issues include undemocratic conduct of Union pre-strike meeting; lack of submission to impartial balloting by the membership, of the Company's last offer before a strike; and the Union Constitution, a nullity. Those issues invoke the Ninth Amendment to the United States Constitution.

In adjudicating those issues as the basis for future negotiations under that contract, the Court may decide whether events before and

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[16] Infra, p. A-1 (IAM).

during the 27 day strike recently concluded were in the proper interest of any party, and whether the results were preventable.

a. The right of an employee to influence the membership of his Union democratically, is not subject to the discretion of the Union.

b. Implicit in the employee's right to democratic unionism, is his right that the Company's last offer before a strike be submitted to impartial secret ballot by the membership.

c. Please note: the employee's further right of access to the Courts, for example under the Civil Rights Act of 1957, was developed supra, p 24 (IAM).

a. Right to influence decisions.

Event #1 in this case presents the deprivation of plaintiff's right to influence decisions, violated by the undemocratic conduct of a meeting, in the discretion of the defendant.

That issue is presented by plaintiff's prayer, on page 7 of the amended complaint:

"....

5. That relief further to provide, when reasonable equilibrium is restored comparable to the status of negotiation last January 19th, that the proposals of plaintiff and others relevant to the issues be heard, the issues understood, and decisions brought to bear upon the proposed and subsequent contracts, in a democratic manner...." (Infra, p. B-10 IAM)

The Union Constitution in this case presents the further deprivation of that right of the plaintiff.

That Union Constitution is protected by the authority of the Labor Management Relations Act, establishing the defendant as plaintiff's sole bargaining representative.[17]

The Union Constitution establishes many undemocratic duties for its members. Violation of those duties invites expulsion in the discretion of the Union, under the unconstitutional procedure of the "Code" for grievances.[18]

The expelled member is automatically deprived of his right to influence the membership of the defendant Union, which is his sole bargaining representative.

Such unconstitutional "duties" forbid:

the proposal of "merit" plans, such as plaintiff's teamwork incentives, bonuses, or profit sharing;[19]

the proposal of overtime work, at premium rates of pay after a basic work week of any length;[19]

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[17] 29 U.S.C., sec. 159 (a) and (f); infra, p. A-2 (IAM).

[18] Supra, p. 24 (IAM).

[19] Constitution of International Association of Machinists, defendant's Exhibit B, Art. J, secs. 5 and 6; infra, p. B-53 (IAM).

the introduction of non-Union members to the trade;[20]

any conduct contrary to the desires of the Union, in their uncontrolled discretion;[21]

and many other actions, comprising arbitrary and frivolous duties.[22]

b. Right to secret ballot on Company's last offer before strike.

The fundamental safeguard in any representative democracy, is responsibility to the people.

That safeguard must apply to any Negotiating Committee of the defendant, particularly prior to a threatened strike. Unless both the Company and the Union know that their bargaining position is certain to be tested by impartial balloting of the membership, their mistakes as negotiators and their responsibility therefor are concealed from everyone, including themselves.

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[20] Constitution of I.A.M., Art. J, sec. 7; infra, p. B-53 (IAM).

[21] For example ibid., Art. K, sec. 3, lines 43 and 44; infra, p. B-55 (IAM).

[22] For example ibid., lines 27 to 34, and lines 40 to 42; infra, p. B-54 (IAM). See also Art. J, sec. 9.

Without that safeguard, each bargaining party is under pressure to be unreasonable, with no opportunity for a ballot to refute unfair criticism, even by fellow-committeemen.

Such bargaining is vulnerable to every danger.

In the instant case the Union further found its own bargaining position during the strike to be undermined by lack of such balloting before the strike,[23] further prejudicing the interests of the plaintiff, and of all other members of the Union.

5. Human Rights Under the Declaration of Independence.[24]

It is apparent from the original Petition that the right to the pursuit of happiness, under the Declaration of Independence, is protected under the Ninth Amendment of the Constitution of the United States. That protection includes the employee's unalienable right "...to follow any of the common occupations of life....This right is a large ingredient in the civil liberty of the citizen...."[24]

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[23] Plaintiff's Exhibit XXXIV, paragraph 3; infra, pp. B-36 and B-37 (IAM).

[24] See original Petition, p. 31, citing Butcher's Union Company v. Crescent City Company, 111 U.S. 746, 762, 28 L. Ed. 585, 4 S.Ct. 652, 1884.

For the member of a labor Union that civil liberty includes the right to democracy, protected by the Ninth Amendment.

6. Growth of Human Rights.

Here, then, is confirmation of the forecast in the original Petition, that "by use of the Ninth Amendment, man's new awareness of his individual dignity and destiny will be tested by such issues as judicial construction of civil rights statutes, jurisdiction, access to facts of record, legalities of each specialized pursuit, and the evolution of unalienable human rights endowed in the name of America's Declaration of Independence."[25]

CONCLUSION

For the foregoing reasons, this Petition should be granted.

Respectfully submitted,

Henry Merritt Farnum,
Petitioner,
70 W. 46th Street,
New York 36, New York.

April 5, 1958

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[25] Original Petition, p. 34.

# TITLE 28, SECTION 2282

Injunction against enforcement of Federal statute; three-judge court required.

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

LABOR MANAGEMENT RELATIONS ACT

(1947)

TITLE 29, SECTION 159

Representatives and elections--(a) Exclusive representatives; employee's adjustment of grievances directly with employer.

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, that the bargaining representative has been given opportunity to be present at such adjustment.

....

Filing by union of its constitution, by-laws, and report; contents of report.

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section ....unless such labor organization and any national or international labor organization of

which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and by-laws and a report, in such form as the Secretary may prescribe, showing--

....

(6) a detailed statement of, or reference to provisions of its constitution and by-laws showing the procedure followed with respect to, (a) qualifications for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor....

....

Section 172 (d) All mediation and conciliation functions of the Secretary of Labor or the United States Conciliation Service under section 8 of the Act entitled "An Act to Create a Department of Labor", approved March 4, 1913 (USC 29, section 51), and all functions of the United States Conciliation Service under any other law are transferred to the Federal Mediation and Conciliation Service....

Section 173.(a) It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor

Section 173 (a), Continued

disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

....

(c) If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act.

RULES OF CIVIL PROCEDURE

FOR THE UNITED STATES DISTRICT COURTS

Rule 19. Necessary Joinder of Parties.

(a) Necessary Joinder. Subject to the provisions of Rule 23 and of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant or, in proper cases, an involuntary plaintiff.

(b) Effect of Failure To Join. When persons who are not indispensable, but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue and can be made parties without depriving the court of jurisdiction of the parties before it, the court shall order them summoned to appear in the action. ....

IAM, Pl. Exhibit I

NOTICE OF COMPLAINT AND OF APPLICATION FOR RESTRAINING ORDER

....

4. On January 19, 1958, at a meeting at the Jamaica Armory, Jamaica, New York, defendant Union ordered a strike in 48 hours, with Tuesday, January 21, 1958 as the final working day before the strike, unless events in negotiation intervened.

5. The conduct of said meeting violated the Constitution of the United States, including its Amendment IX.

6. The International Association of Machinists is hereby notified that prior to 10:30 A.M., January 21, 1958, a complaint will be filed against them by said Henry Merritt Farnum, in the United States District Court for the Southern District of New York, on the above and related issues, and that the plaintiff in that action will move for appointment of a three-judge Court to hear said issues; and will move at said hour of 10:30 A.M., or as soon thereafter as counsel may be heard, for a restraining order and temporary injunction against said strike scheduled for that date.

....

(s) Henry Merritt Farnum

Confirming copies delivered to defendant by hand, and by certified mail #7486856, special delivery

(Note, on mailed original: duplicates to Eastern Regional Office, IAM...; District No. 15, IAM ....)

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| Henry Merritt Farnum, Plaintiff | |
| v. | Filed |
| International Association of Machinists, Defendant | Jan. 21, 1958 |

COMPLAINT

Civil No. 129-88

1. This complaint arises under United States Code, sections 1331 and 1343 of Title 28, sections 1983 and 1985 of Title 42; and other statutes; as hereinafter more fully appears.

2. As a civil liberties issue, no amount in controversy is necessary; although the amount in controversy in fact exceeds $3,000.

3. Plaintiff, Henry Merritt Farnum, is a citizen of the United States and of the State of New York, residing at 70 W. 46th Street, New York 36, N.Y.

4. Said plaintiff is a member of Precision Lodge No. 797, International Association of Machinists, in contract negotiations with plaintiff's employer, the Kollsman Instrument Company,

80-08 45th Ave., Elmhurst 73, New York. All rights, privileges, immunities and relief claimed by plaintiff, he also claims on behalf of all employees of that Company who are members of that Lodge.

5. The office of Lodge No. 797 of the defendant Union is located at 80-07 Broadway, Elmhurst 73, New York. That Lodge is in District 15 of that Union, with offices at 7 E. 15th Street, New York 3, New York. The Regional Office of that Union is at 250 W. 57th Street, New York 19, New York. The Grand Lodge of the International Association of Machinists, affiliated with AFL-CIO, has offices in the Machinists Building, Washington, D.C.

6. Under the Laws of the United States and of the State of New York, the defendant Union is the bargaining representative of the plaintiff in negotiations for a new contract with said Company. The Negotiating Committee is understood to be involved with such negotiations now, substantially on a 24 hour basis.

7. Last Sunday, January 19th, 1958, that Lodge of defendant Union held a meeting open to the Kollsman membership, at Jamaica Armory, Jamaica, Long Island, New York.

8. The conduct of that meeting by the defendant, deprived the plaintiff of his rights under the Constitution of the United States, including its Amendment IX.

9. The meeting as thus conducted, called a strike against said Company in 48 hours, with Tuesday, January 21, 1958, the final working day unless events in negotiation intervene.

10. A principal issue at that meeting was the period of time to be allowed for negotiation before a strike. After numerous unconstitutional events which are included in the subject matter of this complaint, the membership of that Union rejected the recommendation of their own Negotiating Committee, that the Union refrain from striking during the month of January; and substituted therefor a negotiating period of 48 hours.

11. For example, the plaintiff sought to offer a proposal which in his judgment was reasonably adapted to resolve the deadlock between the defendant Union, and the Company, and which would have been consistent with the Negotiation Committee's recommendation of further time for negotiation. Plaintiff's motion, if allowed, would have explored all plans for sharing the benefits of modern technical progress and teamwork, including teamwork bonuses and profit-sharing.

12. On the single issue of that attempted motion by the plaintiff, the defendant violated plaintiff's Constitutional rights in five ways.

13. The foregoing is one of many instances, whereby the meeting failed to protect plaintiff's Constitutional right to orderly and reasoned discussion and decision of the important issues at hand.

14.(a) Plaintiff complains that the actions by the defendant deprive the plaintiff of rights, privileges and immunities secured by the Constitution of the United States, and by Acts of Congress providing for equal rights of citizens.

(b) Plaintiff further complains of deprivation by such actions of his rights, privileges and immunities under color of any state law, statute, ordinance, regulation, custom or usage, either by representatives of the defendant only, or by their concerted agreement with other persons.

Plaintiff prays for:

(1)Appointment of a three-judge Court to determine the facts and resolve the issues here presented, and to grant appropriate relief;

(2)Such relief to include interlocutory and permanent injunctions against the practices set forth in this complaint;

(3)Such relief further to include declaratory relief against such practices in the future;

(4)A restraining order against the strike called for January 22, 1958, pending determination of the issues here presented;

(5)All other relief to which plaintiff may be entitled in his own right, and on behalf of all other persons similarly situated.

70 W. 46th St.,
New York 36, N.Y.

(s) Henry Merritt Farnum,
Plaintiff

This amendment of the original complaint strikes the original item 14 and prayer, and substitutes the following items numbered 14 to 22, and the following prayer.

14.(a) Kollsman Instrument Company, plaintiff's employer, is a corporation organized and existing under and by virtue of the laws of the State of New York, having an office, and plant where plaintiff is employed, at 80-08 45th Ave., Elmhurst 73, New York.

(b) The office of the Regional Director, Federal Mediation and Conciliation Service, is at 1016 Parcel Post Building, New York 1, New York.

(c) The office of the Regional Director, National Labor Relations Board, is at 2 Park Avenue, New York 16, New York.

(d) The office of the District Director, State Mediation Board, New York State Department of Labor, is at 270 Broadway, New York, New York.

15.The events here set forth in items 16 through 21, comprise events reported to the Union membership by their Business Representative on January 27, 1958, at the meeting announced in plaintiff's Exhibit V.

16.In negotiations between the Union Negotiating Committee and the Company, on Monday, January 20, and through Tuesday afternoon, January 21, the Company repeatedly requested that each new Company offer be submitted to the vote of the membership of the Union. Until after the Company's final offer hereinafter described, the Union withheld any promise to submit the

issue to the people. The federal mediator counseled that the Union had no obligation to submit the issue to the vote of the membership.

17. On Tuesday, January 21, 1958, between 3:30 and 4 P.M., the Company in bargaining session with the Union Negotiating Committee, announced the Company's final offer. That offer approximately tripled the offer rejected two days before by the Union membership, in their strike vote described in item 9 of the original complaint.

18. (a) At 4 P.M. that afternoon, with first shift due to quit in thirty minutes for the last time before the strike, the Union negotiators disclosed to the federal mediator a basis of settlement representing a substantial concession from previous demands, which the mediator stated to justify hope for agreement that afternoon. The Union negotiators stated willingness to recommend to the membership acceptance of that basis.

(b) The mediator could not arrange for negotiations on the Union's new proposal, until 4:30 P.M. had passed.

19. (a) At that moment of 4:30 P.M., while the negotiators were being reconvened, the Company was distributing to each employee on the first shift, as he left the plant, a written announcement of the Company's final offer in item 17 above, plaintiff's Exhibit III. That offer concluded, "please exercise your right by casting your ballot tomorrow".

(b) The Union Negotiating Committee strongly objected to the Company's action in distributing

that written announcement. Principally as the result of those objections, the Negotiating Committee reversed their previous position by stating that the Company would be picketed the next day, including any period that the polls were open.

(c) By 6:30 P.M. the Negotiating Committee decided privately to authorize vote by the membership on the Company's final offer, and to recommend rejection of that offer. Those decisions were reduced to writing and distributed to the second shift before work ceased at 3:30 the next morning, one copy comprising plaintiff's Exhibit IV.

20. On that next day, January 22, the polls were never opened by the Union officers, and no vote of the membership was taken.

21. (a) The Company's final offer expired that day, by its terms, and has not been renewed.

(b) The Union has withdrawn its proposal in item 18-a above, in return by the Negotiating Committee to their original demands.

(c) Negotiations have not been resumed. The Union does not plan to contact the Company.

22. Plaintiff complains, and says:

(a) Federal and state statutes requiring the plaintiff to join a specific Union as a condition of employment, and establishing that Union as his sole bargaining representative, are subject to the rights reserved to the people by Amendment IX of the Constitution of the United States.

(b) For example, deprivation of plaintiff's right that the Company's final offer shall be submitted to an impartial, secret ballot of employees, violates Amendment IX.

(c)As a further example, deprivation of plaintiff's right that the meeting at Jamaica Armory last January 19th be conducted in a democratic manner, violates Amendment IX.

(d) The actions by the defendant deprive the plaintiff of rights, privileges and immunities secured by the Constitution of the United States, and by Acts of Congress providing for equal rights of citizens.

(e) Plaintiff further complains of deprivation by such actions of his rights, privileges and immunities under color of any state or federal law, statute, ordinance, regulation, custom or usage, either by representatives of the defendant only, or by their actions in concert with other parties.

Plaintiff prays for:

1. Appointment of a three-judge Court to determine the facts and resolve the issues here presented, and to grant appropriate relief. Such jurisdiction is based upon USC, Title 28, sections 2281, 2282, and 2284. Such issues of fact include confirmation that the Company's last offer is still available.

2. Such relief includes interlocutory and permanent injunctions against actions by any party violating plaintiff's rights here established.

3. Such relief further includes declaratory relief against such actions in the future.

4. Such relief specifically includes an injunction against the United States Conciliation Service, or any other party who may invoke the applicable provisions of U.S.C., Title 29, section 173, against a Court order for secret ballot on the Company's final offer; an injunction against Union picketing during the balloting; such vote to be ordered forthwith, on motion* to all employees, at polls impartially administered;

5. That relief further to provide, when reasonable equilibrium is restored comparable to the status of negotiation last January 19th, that the proposals of plaintiff and others relevant to the issues be heard, the issues evaluated, and decisions brought to bear upon the proposed and subsequent contracts, in a democratic manner.

6. All other relief is requested, to which plaintiff may be entitled in his own right, and on behalf of all other persons similarly situated.

(s) Henry Merritt Farnum,
Plaintiff

70 W. 46th Street,
New York 36, New York.

(February 7, 1958. Jurat)

---

* "Motion" should read "notice".

IAM, Pl. Exhibit II

AFFIDAVIT OF PLAINTIFF

STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.:

The undersigned, Henry Merritt Farnum, being duly sworn, deposes and affirms as follows.

....

4. On January 1, 1958 the previous contract between that defendant Union, and said plaintiff's employer, expired. The Negotiating Committee of that Union is now believed to be negotiating with that Employer, substantially on a 24 hour basis, concerning the terms of a new contract.

....

8. The Report of that Negotiating Committee recommended that the Union membership take two actions: (1) reject the offer of the Employer, and (2) permit negotiations to continue through the month of January, before striking.

9. The plaintiff then was recognized by the presiding officer, and sought to offer a proposal which in his judgment was reasonably adapted to resolve the deadlock between the Union and the Employer, and which would have been consistent with the Negotiation Committee's recommendation of further time for negotiation.

10. On this single issue, the defendant then violated plaintiff's rights under the Constitution of the United States, in five ways:

    a. Plaintiff was obstructed in his brief discussion of his proposal, thus preventing understanding by the membership;

b. Plaintiff was denied his right to an impartial presiding officer during such discussion;

c Plaintiff was forcibly restrained from reading his proposal, thereby depriving the membership of any chance for a reasoned decision on its merits, or on any ruling by the presiding officer;

d. Although a written copy of plaintiff's proposal had been delivered to the presiding officer, that officer refused to read or to allow a vote on that proposal, and declared it out of order;

e. Vote by the membership on a point of order, was not permitted.

11. Plaintiff's motion was, "The motion to be amended, as follows,
3. That our negotiating committee be authorized to explore all plans and authority necessary to create an effective plan for sharing the benefits of modern technical progress and teamwork. Such sharing of benefits includes teamwork bonuses or profit-sharing."

12. The foregoing is one of many instances, whereby the meeting failed to provide for orderly and reasoned discussion and decision of the important issues at hand. The rudiments of parliamentary procedure were lacking in the meeting and its decisions.

13. On Monday, January 20, 1958, plaintiff delivered by hand a copy of the Notice of Complaint and of Application for Restraining Order, attached to the complaint as Plaintiff's

Exhibit I. Mr. George Trevors, Financial Secretary of said Lodge, there received that copy.

On that day, copies of that Notice were mailed by certified mail, special delivery, to each of the three offices of the Union listed above in paragraph 1.

Dated at New York, New York, this 20th day of January, 1958.

(s) Henry Merritt Farnum

(Jurat)

STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.:

Henry Merritt Farnum, being duly sworn, deposes and says:

At the meeting in Jamaica Armory on January 19, 1958, when the plaintiff was recognized by the presiding officer to speak on the motion, he came to the podium to hand Mr. Kaltun a handwritten copy of the motion to amend, plaintiff's Exhibit VII. From that Exhibit, and from plaintiff's First Affidavit, it is clear that the motion was in the form of an amendment, adding a third provision to those then before the meeting. The presiding officer made no objection to the form of the motion.

While plaintiff spoke briefly on his amendment, the presiding officer interrupted several times with the words, "You are out of order", inviting disorder in the meeting. Plaintiff repeatedly claimed a point of order, and asked that it be put to a vote of the membership. The officer made no movement to retire in favor of the Vice-President, or to debate or put to a vote plaintiff's point of order, although under Rule 18 such was the presiding officer's responsibility.

The five results were exactly as set forth in plaintiff's first Affidavit, paragraph 10.

After plaintiff physically was removed from the microphone, plaintiff repeatedly called for a point of order directly in front of the platform, in accordance with Rules 14 and 15, but plaintiff was unrecognized despite the high priority of his parliamentary inquiry.

Plaintiff then delivered to the presiding officer a handwritten note, keeping a duplicate comprising plaintiff's Exhibit VIII, as follows:"My amendment was within the purpose of this meeting as announced, and therefore was in order."

Thereafter the presiding officer recognized the plaintiff, who repeated aloud the message of Exhibit VIII, and requested that a vote be taken on the point of order. Contrary to Rules 14 and 15, the presiding officer declined to allow the vote.

The fact that plaintiff's motion to amend was germane to the purpose of the meeting, and to the main motion, is clear even from the Affidavit of Mr. Kaltun.

Plaintiff's Exhibit III, comprising the Company's final offer before the strike, was distributed to each employee on the second shift, as he entered the plant at 7 P.M. on Tuesday, January 21, 1958.

Plaintiff's Exhibit IV, comprising the Union's recommendation to vote to reject the Company's final offer, was distributed to each employee during the second shift that same day. At that time the employees were told that the polls would be open the next day, Wednesday, from 7 A.M. to 7 P.M., for voting on the Company's final offer at the usual voting place, American Legion Hall, Elmhurst, New York.

At 6:30 P.M. on January 22, 1958, plaintiff arrived at that Hall, intending to vote, and was told by the attendant in charge that no

voting had taken place at any time that day.

Plaintiff's Exhibit V, comprising Strike Bulletin No. 2, was distributed to the plaintiff at Strike Headquarters in Elmhurst on Saturday, January 25, 1958.

At the first strike rally on January 27, 1958, the Business Representative, Mr. Henry Kaltun, addressed the meeting. He advised that the Negotiating Committee had been displeased by the Company's distribution of plaintiff's Exhibit III. He stated that there had been no vote by the membership on the Company's last offer; that the Company offer expired by its terms on January 22; that the terms which the Union Negotiating Committee had stated to the United States mediator their willingness to accept January 21, were no longer acceptable; that there had been no bargaining since the strike began; and that the Union did not plan to call the Company.

A member of the Negotiating Committee then addressed the meeting, and asserted that the membership at Jamaica Armory on January 19th, 1958, had given the Committee full discretion to decide whether the Company's last offer would be submitted to the membership for a vote.

(s) Henry Merritt Farnum

Sworn to before me, this 28th day of January, 1958
....

(Jurat)

COMPARISON BETWEEN TWO COMPANY OFFERS,
using defendant's outline of each

Each offer comprises eleven items.

Eight pairs of items are identical in each offer.

In each of the other three pairs of items, the higher offer is marked (*).

| Company's last offer before the strike | Company offer accepted at end of 27 day strike |
|---|---|
| (Exhibit IV) | (Exhibit XXXV) |
| 1. An 18 month contract. | Length of contract: Jan. 1, 1958--June 30 1959. |
| 2. General increase across the board 3% retroactive to January 1, 1958. | General 3% increase retroactive to Jan. 1, 1958 for all hours worked. |
| 3. General increase of an additional 2% across the board as of July 1st, 1958. | Additional general *increase of 2½% starting July 1, 1958 for all hours worked. |
| 4. Adoption now of a Pension Plan for Kollsman employees, Kollsman administered with a company contribution of five (5¢) cents per hour | (Item 5 in Exhibit XXXV) The Company is to pay 5 cents per hour per employee towards a Pension Plan starting April 1, 1959, to be |

| Company's last offer before the strike, Continued | Company offer accepted at end of 27 day strike, Continued |
|---|---|
| per employee. The payments to commence *on January 1st, 1959. | jointly administered by the Union and the Company; this money to be utilized to purchase the greatest benefits which can be obtained for the contribution; it being further agreed that nothing is to prevent a subsequent transfer into any other superior type of Pension Plan which can be mutually agreed upon between the Company and the Union. |
| 5. Cost of living clause giving the employees any increase in the cost of living in excess of 2% of the difference in the B.L.S. index for New York City between January 1st, 1958 and July 1st, 1958 effective as of July 1, 1958. | (Item 4 in Exhibit XXXV) *An automatic cost-of-living increase on September 1, 1958, to be based on the August 15, 1958 cost-of-living index as released by the Bureau of Labor Statistics for New York City. The adjustment to be made upward only. There will be no decrease in case the cost-of-living index should show a decline. |

| Company's last offer before the strike, Continued | Company offer accepted at end of 27 day strike, Continued |
|---|---|
| .... | .... |
| "VOTE TO REJECT THE ABOVE" | 12. THERE ARE TO BE NO REPRISALS AGAINST ANY EMPLOYEE BY THE COMPANY AS A RESULT OF THE STRIKE. |

(NOTE: items 6 to 11 are the same verbatim, in both offers. The general subject-matter follows)

6. No lay-off while overtime continues.

7. Training programs to be formalized in writing.

8. Layoff seniority for transferees.

9. Notification to Union of new jobs.

10. Provision for shifts less than 8 hours.

11. No unemployment insurance during vacation.

IAM, Pl. Exhibit V

STRIKE BULLETIN NO. 2

Issued by Kollsman Strikers Committee,
Precision Lodge 797,
International Ass'n. of Machinists,
80-07 Broadway,
Elmhurst, Long Island.

Friday, Jan. 24, 1958.

First strike rally! This Monday at 11:00 A.M. At Sunnyside Gardens, 45th St. & Queens Blvd., Sunnyside, L.I. Bring your badge or Union book. This is for both plants. Be sure to attend.

....

4) The office workers are terrific: 700 members of O.E.I.U., Local 153, are on strike with us. They are certainly holding up their end of the picket line, men and women alike...They finally got the federal mediators to start talks between the office workers and the Company. Up to now, the Company didn't even bother to talk with the Office Union for more than a few minutes. Needless to say, the office people will not settle their contract until we sign our own contract.

One for all and all for one!

....

IAM, Pl. Exhibit VI

Original by hand to District 15, January 27, 1958, without receipt.
Copy of duplicate delivered by hand to Mr. Stephen Vladeck, Atty. for defendant, at 147 W. 42nd Street, New York, N.Y., January 27, 1958, without receipt.

January 27, 1958

Chief Counsel,
International Association of Machinists,
District No. 15,
7 E. 15th Street,
New York, N.Y. ....

Dear Sir,

This letter will confirm my understanding that Union officers responsible for the conduct of meetings of Kollsman employees will be present at the hearing of the above case in the United States Court House, Foley Square, in the City of New York, in Room 506 at 10:30 A.M. on January 28, 1958.

It is my understanding that those officers responsible for the conduct and records of the Union meetings from January 19, 1958 to January 27, 1958 inclusive, will be available at that hearing and adjournments thereof, with the records pertinent to those meetings and the issues of this case, and will be subject to call by the plaintiff as adverse witnesses.

Those officers include Mr. James Dugan, Recording Secretary, Precision Lodge 797; Mr. Henry Kaltun, Business Agent, District No. 15, I.A.M.; Mr. Frank Alexander, President, Precision Lodge 797; and Mr. Frank Coonsley, International Vice President, International Association of Machinists....

(s) Henry Merritt Farnum

EXHIBIT VII

The motion to be amended, as follows,

3. That our negotiating committee be authorized to explore all plans and authority necessary to create an effective plan for sharing the benefits of modern technical progress and teamwork. Such saring (Ed.: sharing) of benefits includes teamwork bonuses or profit-sharing.

I move the adoption of this amendment.

EXHIBIT VIII

Mr. Kaltun,

My amendment was within the purpose of this meeting as announced, and therefore was in order.

I cannot even get the floor to raise a point of order.

Yours sincerely,

H.F. #8508

MOTION FOR AMENDMENT, JOINDER, INJUNCTION AND BALLOTING

1. Plaintiff moves under Federal Rule 15 that leave be granted to amend the complaint by the amendment attached hereto.

2. Plaintiff moves under Federal Rule 19 that the following parties cited by name and address in the amended complaint, be joined as defendants in the above action: Kollsman Instrument Company, Federal Mediation and Conciliation Service, National Labor Relations Board, and New York State Mediation Board.

3. Plaintiff moves for a Court order for hearing forthwith by a three-judge Court of this motion for an injunction against the United States Conciliation Service, or any other party who may invoke the applicable provisions of U.S.C., Title 29, Section 173, against a Court order for secret ballot on the Company's final offer; for an injunction against Union Picketing during such balloting; and for a Court order of such vote by secret ballot forthwith, on notice to all employees, at polls impartially administered.

The above motion is hereby noticed for hearing at 10:30 A.M. in the forenoon, on February 13, 1958, at Room 506, United States Court House, Foley Square, New York, New York.

(s) Henry Merritt Farnum,
Plaintiff

PLAINTIFF'S AFFIDAVIT AND MOTION FOR JOINDER

STATE OF NEW YORK )
CITY OF NEW YORK ) ss.:
COUNTY OF NEW YORK )

Henry Merritt Farnum, being duly sworn, deposes and says.

1. The headquarters for the Office Employes International Union in this area, comprising at least two Locals in addition to the International Union, are at 263 West 14th Street, New York, N.Y.

2. Local 153, at that address, is the bargaining representative of the office workers at Kollsman Instrument Company.

3. As confirmed by Strike Bulletin No. 2 issued by the defendant, comprising plaintiff's Exhibit V, said Local 153 has joined the defendant in the strike, with mutual agreement that neither will end the strike until both have satisfactory contracts with the Company.

4. Wherefore plaintiff moves that the Office Employes International Union be summoned and joined as a defendant in the above case.

(s) Henry Merritt Farnum

(Jurat, February 13, 1958)

IAM, Pl. Exhibit XVI

PLAINTIFF'S MEMORANDUM OF LAW

Originally filed January 29, 1958.

Duplicate copy annexed to plaintiff's Exhibit XXXIV, filed February 21, 1958.

(Note: this document is appended as a matter of record, not as a supporting brief. Therefore its citations are not indexed)

I. PLAINTIFF IS DEPRIVED OF RIGHTS PROTECTED BY THE NINTH AMENDMENT, UNITED STATES CONSTITUTION

A. The issues of the meeting at Jamaica Armory on January 21,*1958, and plaintiff's right that the meeting be conducted in a democratic way.

1. Plaintiff's right to be heard on the issue of profit-sharing (productivity and control of inflation)

2. Undemocratic conduct in overruling the recommendation of the Union Negotiating Committee, for no strike in January

3. Undemocratic procedure in determining discretion of Negotiating Committee, including submission of Company's final offer to vote of the people.

B. The issues of democratic conduct by Negotiating Committee and Union, after the meeting on January 21,* 1958.

---

* Should be January 19, 1958.

I- B-1. Inconsistent decisions on issue of submission of Company's final offer to vote of the people.

2. Method of decision as to acceptable offer

a. By recommendation of Committee

b. By decision of membership.

II. ISSUES OF CONSTITUTIONALITY OF UNION CONDUCT UNDER AUTHORITY OF STATUTES

A. Federal statutes

1. National Labor Relations Act; no duty to submit final offer to people

2. Labor Management Relations Act

B. State statutes, including New York State Labor Relations Act, Ch. 443, Laws 1936, as amended (secs. 703 to 708)

C. Issues for three-judge Court

1. Title 42, sec. 1983

2. Title 42, sec. 1985

3. Title 28, sec. 2281

4. Title 28, sec. 2282

III. ISSUES OF CONSTITUTIONALITY OF INJUNCTION STATUTES, AND AVAILABILITY OF INJUNCTIVE RELIEF

Clayton Anti-Trust Act '1914)

1. If in conflict with Point I above, Act is unconstitutional

2. If issue in instant case is undemocratic conduct, with no issue of right to strike, then Clayton Act does not prevent injunctive relief

B. Similarly, Norris LaGuardia Act

1. Section 4 (Title 29, sec. 104)

a. Impairment of authority of Supreme Court of U.S.

b. Issue of definition of labor dispute

2. Section 7 (Title 29, sec. 107)

a. Subdivision (b), issue of conflict with Amendment IX

b. Similarly, subdivisions (c) and (e)

C. Issue of unconstitutional conflict with Civil Rights Act of 1957 (Title 28, sec. 1343)

1. Three-judge Court should hear and decide issues

2. As Civil Rights case, no amount in controversy necessary

3. In alternative, original jurisdiction under Title 28, sec. 1331 (federal question), with more than $3,000 in

controversy, including class action under Rule 23, F.R.C.P.

D. Right to strike not in issue; restraining order and temporary injunction is against violations of Amendment IX, U.S. Constitution.

Respectfully submitted,

Henry Merritt Farnum,
Plaintiff

IAM, Pl. Exhibit XX

## AFFIDAVIT BY PLAINTIFF

February 12, 1958

STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.:

1. The strike by more than 4,000 members of the defendant Union, against Kollsman Instrument Company, continues in full force. The magnitude of the irretrievable daily loss of important production and personal income, is indicated by printed reports of a $100,000,000 backlog of orders, 94% military, with a large portion thereof comprising components of missiles and military aircraft.

2. No secret ballot, impartially administered, has been scheduled for vote by the employees on the Company's last offer.

....

6. a. The purpose of the order here moved is to subpoena the evidence and to order the necessary parties before the Court with the responsibility to make the decision, at the earliest possible date.

   b. That Court must be a three-judge Court, because of federal Constitutional issues including the amended National Labor Relations Act (plaintiff's Exhibit IX), and Amendment IX of the Constitution of the United States.

7. On February 8, 1958, plaintiff delivered subpoenas issued to the four Union officers designated in plaintiff's Order annexed hereto, to testify for the defendant at the hearing in item 5 above. Those four officers are the ones who have presided and reported at each of the

Union meetings during the period from January 19, 1958 to date. Two or more of those officers attended Company-Union negotiations during that period. The testimony of those four officers will be relevant to each of the issues noticed for the hearing. Each subpoena was delivered to the office of defendant's Precision Lodge 797, Elmhurst, New York.

....

Respectfully,

(s) Henry Merritt Farnum,
Plaintiff

(Jurat, dated February 12, 1958)

IAM, Pl. Exhibit XXX

PLAINTIFF'S AFFIDAVIT AND MEMORANDUM OF LAW

To Court at hearing February 13, 1958
Filing date February 14, 1958

(Note: this document is appended as a matter of record, not as a supporting brief. Therefore its citations are not indexed)

STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.:

Henry Merritt Farnum, being duly sworn, deposes and says....

II. PLAINTIFF'S RIGHT TO NECESSARY JOINDER OF PARTIES, UNDER THE AMENDED COMPLAINT IN THIS CASE, IS PROTECTED BY THE CONSTITUTION OF THE UNITED STATES.
The Constitutional reasons are set forth supra, under I-A.

A. On the issue of plaintiff's right to a secret ballot, impartially administered, on the Company's last offer, Kollsman Instrument Company is an indispensable party, in that their rights, duties, or interests might (and of course would) be affected by the final decree. Jarvis v. Schackelton Inhaler Co., CCA Mich. 1943, 136 F 2d 116; Bendix Aviation Corp. v. Kury, DC N.Y. 1950, 88 F. Supp. 243.

B. The Office Employes International Union is an indispensable party, having a mutual agreement with the defendant, by his own admission, not to settle the strike independently. (Strike Bulletin No. 2, plaintiff's Exhibit V).

C. The Federal Mediation and Conciliation

Service is an indispensable party, with the relief in issue comprising an injunction against the federal statute administered by that Service. Plaintiff's Exhibit IX, citing U.S.C. Title 29, sections 172 (d), and 173 (a) and (c).

D. The indispensable status of the New York Mediation Board can only be determined by joinder or by a final Court order as to its concurrent jurisdiction, for no other party can commit that Board....

E. The National Labor Relations Board is either a necessary party in that its rights and duties are affected, as in the administration of a secret ballot; or a formal party, as in Court decision as to complete relief.

III. THIS COURT SHOULD RULE THAT A THREE-JUDGE COURT HAS ORIGINAL JURISDICTION.

A. The three-judge Court will have original jurisdiction under all four subdivisions of U.S.C., Title 28, section 1343, as amended by the Civil Rights Act of 1957.

1. That Court will determine the facts as to deprivation of rights or privileges by two or more persons, under subdivision (1). Such facts will, for example, relate to the following persons.

a. The two Unions with a mutual agreement.

b. The three presiding officers at meetings of the Union membership which are relevant to the issue of voting on the Company's last offer.

c. The members of the Negotiating Committee,

including one officer, who spoke to the membership at two of those meetings; and the other members of the thirteen-man committee.

d. The many other undemocratic actions and concerted actions, for example under items 13 and 22(c) of the amended complaint.

2. The Court similarly will determine the facts relevant to subdivision (2), as they involve more than one person, union, or division of a union; and as to subdivision (4) for example violating Title 42, sections 1983 and 1985, U.S.C. Likewise subdivision (3), for example in relation to the New York State Mediation Board.

B. The three-judge Court is required by U.S.C., Title 28, sections 2281, 2282, and 2284.

1. Unenumerated rights protected by Amendment IX of the United States Constitution, are new issues before the Supreme Court of the United States. For example, deprivation by the Labor Management Relations Act, of the employee's right to a secret ballot on the Company's last offer.

....

C. Injunctive relief is in issue as set forth in item 3 of the Motion therefor, noticed for hearing today.

D. With substantial issues of unconstitutionality, and the jurisdiction of the District Court thus established, "...it is the duty

III-D Cont.

of such judge to convene the three-judge Court, no matter what his own opinion may be ...."Carras et al. v. Monaghan, 65 F. Supp. 658, 1946.

E. That three-judge Court should receive forthwith the testimony and records of Union officials described in item 7 of the affidavit annexed to plaintiff's Motion For Order To Subpoena, directed to the persons listed in the Order annexed thereto.

Respectfully,

(s) Henry Merritt Farnum

(Jurat, February 13, 1958)

IAM, Pl. Exhibit XXXII

AFFIDAVIT OF NON-APPEARANCE UNDER SUBPOENA

February 20, 1958

STATE OF NEW YORK )
CITY OF NEW YORK ) ss.:
COUNTY OF NEW YORK )

Henry Merritt Farnum, being duly sworn, deposes and says:

....

3. None of the parties subpoenaed appeared thereunder February 13th, nor did their attorney move to quash. At the hearing that day plaintiff's written Memorandum and oral argument stressed, as a matter of law, plaintiff's right to a hearing to receive testimony and Union records from the defendant's officers. Plaintiff filed in Court his Motion For Order To Subpoena with documents annexed, seeking an Order under item 2 of that Motion.

4. The issues noticed for hearing that day were joined by the Court's rulings at that hearing. Defendant handed to the plaintiff in Court at the time of those rulings, each of the four subpoenas annexed hereto, each in its envelope, at that time apparently unopened.

....

(s) Henry Merritt Farnum,
Plaintiff

(Jurat)

IAM, Pl. Exhibit XXXIV

AFFIDAVIT AND MOTION FOR INJUNCTION

February 20, 1958

The within motion is hereby noticed for hearing at 10:00 A.M. in the forenoon, on February 25, 1958....

STATE OF NEW YORK )
CITY OF NEW YORK ) ss.:
COUNTY OF NEW YORK )

Henry Merritt Farnum, being duly sworn, deposes and says.

1. At a meeting of the membership of the defendant's Precision Lodge 797 on February 15, 1958, the defendant distributed to each employee defendant's Strike Bulletin No. 14, plaintiff's Exhibit XXXV, comprising the terms of the Company's most recent offer, with recommendation by the defendant's Negotiating Committee for acceptance by the membership.

2. That offer was substantially identical to the one which the defendant had failed to submit to a vote of the membership before the strike. There are small differences which depend upon the trend in living costs, and which may make the new offer slightly lower, or slightly higher, than the Company's final offer before the strike.

3. The defendant's Business Representative, Chairman of the Negotiating Committee, addressed the meeting. He stated that the defendant, at the time of important bargaining sessions with the Company during the strike, had

been battered with complaints from members who requested the chance to vote on the Company's final offer, and with threats that such persons would impair the strike by crossing the picket line. He stated that those conditions prevailed when the Negotiating Committee decided to call this meeting, for the purpose of balloting.

4. The membership thereupon voted by written ballot to accept the Company's offer, by a majority substantially greater than 2 to 1.

5. On February 18, 1958, after 27 days the strike ended.

6. Plaintiff therefore observes that reasonable equilibrium has been restored.

Upon this affidavit, the documents hereto annexed, and all of the prior proceedings in this case, plaintiff moves as follows.

A. Plaintiff moves for a court order for relief in accordance with paragraph 5 of the prayer of the amended complaint, "...when reasonable equilibrium is restored comparable to the status of negotiation last January 19th, that the proposals of plaintiff and others relevant to the issues be heard, the issues evaluated, and decisions brought to bear upon the proposed and subsequent contracts, in a democratic manner."

B. Plaintiff moves for a permanent injunction, enjoining the defendant against including in said contract any direct or indirect requirement, as a condition of employment by the Company, that the membership of the defendant is subject to, or bound by, the Constitution of the International Association of Machinists,

defendant's Exhibit B.

C. Plaintiff moves that the Kollsman Instrument Company is an indispensable party on these issues, and that the Company be joined as defendant under Rule 19, F.R.C.P.; and that said Company be enjoined against including in said contract any direct or indirect requirement whereby employment depends upon the employee's being subject to, or bound by, said Exhibit B.

D. Plaintiff moves for appointment of a three-judge Court, to hear the issues here set forth in paragraphs A to C inclusive, including plaintiff's application for a permanent injunction; the hearing to be set for March 3, 1958.

E. Plaintiff here moves for a restraining order against the defendant, and against the Kollsman Instrument Company joined as defendant, thereby enjoined until such hearing March 3, 1958 from entering into, ratifying, validating or enforcing any contract in violation of said paragraphs A to C, inclusive.

....

(s) Henry Merritt Farnum,
Plaintiff

(Jurat, February 20, 1958)

(Plaintiff's Exhibits XVI, XXX, and XXXV annexed)

IAM, Pl. Exhibit XXXVI

AFFIDAVIT AND NOTICE OF AMENDED COMPLAINT

STATE OF NEW YORK )
CITY OF NEW YORK ) ss.:
COUNTY OF NEW YORK )

Henry Merritt Farnum, being duly sworn, deposes and says.

1. On February 7, 1958, plaintiff personally served on defendant's Attorney, Vladeck and Elias, 147 W. 42nd St., New York 36, New York, documents including the following: a copy of the original complaint; a copy of plaintiff's Verified, Amended Complaint; and plaintiff's motion that "leave be granted to amend the complaint by the amendment attached hereto".

2. On February 8, 1958, the original amendment, signed and sworn, was filed with the Clerk.

3. At hearing in open Court on notice February 13th, Judge Archie O. Dawson marked that motion "Granted"; with endorsement of that date, "...Item 1 allowed....So ordered...."

4. By motion on notice and served February 20, 1958, in para. A, plaintiff cited a direct quotation from the "amended complaint".

5. Defendant now avers that the complaint is not amended. This notice confirms the fact of amendment as of February 13, 1958. For defendant's convenience plaintiff will, upon request, requisition a copy from the Court Record.

(s) Henry Merritt Farnum

(Jurat dated February 24, 1958)

IAM, Pl. Exhibit XXXVIII

AFFIDAVIT AND MEMORANDUM ON DEFENDANT'S CONSTITUTION

Affidavit dated February 26, 1958

The Constitution of the International Association of Machinists, defendant's Exhibit B, is a nullity for violation of the Constitution of the United States including its Amendment IX.

I. Its "Code" for grievances, Art. K, is unconstitutional.

A. It impairs the jurisdiction of all Courts, including all federal Courts and including the Civil Rights Act of 1957 (Art. K, sec. 16, lines 43 to 46).

B. Its exhausting four-stage process of appeal culminates either in appeal to the Grand Lodge National Convention, or a national referendum directed to 850,000 members. (Art. K, sections 14 to 16 inclusive).

C. Its procedure for trial and review is unconstitutional; for example,

1. A member's attorney must be a member of I.A.M., and thus subject to each invalid requirement of the Constitution (Art. K, sec. 10)

2. There is no right of public trial (Art. K, sec. 11)

3. There is no right to appear in person on appeal (Art. K, secs. 14 to 16 inclusive)

I- D.The Code covers all invalid"duties", infra; with no criteria for other "duties". (Art. K, sec. 1, lines 26-33)

II. The duties of members are unconstitutional; for example

A.Deprivation of rights in a democracy:

1. Art. J, sec. 5.

2. Art. J, sec. 6.

3. Art. J, sec. 7.

4. Art. J, sec. 9.

5. Art. K, sec. 3, lines 27 to 31; 32 to 34; 40 to 42; etc.

III. Important legal liabilities are negated, for example

A.Art. XIII, Sec. 8 (Pensions)

B.Art. XVIII, Sec. 10 (Special pensions).

(s) Henry Merritt Farnum,
Plaintiff

(Jurat on separate page,
dated February 26, 1958)

IAM, Pl. Exhibit XXXX

NOTICE OF RECORD, WITH AFFIDAVIT

STATE OF NEW YORK )
CITY OF NEW YORK ) ss.:
COUNTY OF NEW YORK )

TO THE CLERK OF COURT:

Henry Merritt Farnum, being duly sworn, deposes and says.

This is notice that the documents filed in the record of this case comprise, without being limited to, the following. Therefore the record in any further proceedings by plaintiff, including Petition for Writ of Mandamus, comprises at least such documents, and documents filed hereafter in this Court.

Roman numerals refer to plaintiff's Exhibits. Capital letters refer to defendant's Exhibits.

Complaint, filed January 21, 1958.

I. Notice of Complaint and of Application For Restraining Order, delivered by hand and by certified mail January 20, 1958.

II. Affidavit of Plaintiff (3 pages).

Summons to International Association of Machinists, & Return.

Order January 21, 1958, with endorsement, denying restraining order and setting January 28th for hearing on motion for restraining order pending hearing before three-judge Court.

Plaintiff's Motion For Restraining Order Pending Hearing (by three-judge Court), heard by Judge William B. Herlands on January 21, 1958, after notice of intention to file complaint. With endorsement by Judge Herlands January 28, 1958, denying plaintiff's Motion in all respects.

Second Affidavit of Plaintiff (revision as filed), 3 pages.

III. Company's last offer before the strike, January 21, 1958.

IV. Defendant's recommendation on Exhibit III, distributed to employees on next shift thereafter; 2 pages.

V. Defendant's Strike Bulletin No. 2, January 24, 1958; 2 pp.

VI. Plaintiff's letter dated January 27, 1958, to defendant's Chief Counsel.

VII. Plaintiff's Motion To Amend, attempted at meeting January 19, 1958.

VIII. Duplicate of plaintiff's written complaint to presiding officer at meeting January 19th.

For defendant, Affidavits by Mr. Henry Kaltun and Mr. Frank Alexander.

A Constitution and By-Laws, Precision Lodge 797, District No. 15, International Association of Machinists, June, 1957.

B. Constitution of the International Association

of Machinists, effective January 1, 1957.

IX. Labor Management Relations Act, USC Title 29, sections 172 (d) and 173 (a) and (c); annexed to Exhibit XI.

X. Verified, Amended Complaint Under Federal Rule 15 (a), as served and filed, with pages 6 and 7 revised; annexed to Exhibit XI.

XI. Motion for Amendment, Joinder, Injunction and Balloting, heard on notice Feb. 13, 1958 before Judge Archie O. Dawson. Exhibits III, IV, V, IX, and X annexed thereto.

XII. Order moved by plaintiff at hearing Feb. 13; item 1 granted; items 2 and 3 denied.

Affidavit and Motion For Joinder, filed by plaintiff at hearing Feb. 13th.

Motion For Amendment, Joinder, Injunction and Balloting, heard ex parte by Judge Dawson Feb. 6; hereby designated Exhibit XIII; with complaint, and Exhibits III, IV, V, and IX annexed; also original draft of Verified, Amended Complaint, pages 3 to 7; and Affidavit and Motion For Ruling, 2 pages.

Order moved by plaintiff in Exhibit XIII, before Judge Dawson in chambers Feb. 6th; hereby designated Exhibit XIV

Plaintiff's Memorandum of Law, hereby designated Exhibit XVI; annexed to plaintiff's Motion For Injunction, Exhibit XXXIV.

Affidavit by Plaintiff, annexed to Exhibit

XXI; hereby designated Exhibit XX.

Motion For Order To Subpoena, filed by plaintiff in Court at hearing Feb. 13th; hereby designated Exhibit XXI.

Order To Subpoena moved by Exhibit XXI; hereby designated Exhibit XXII.

XXV. Affidavit of Service, by plaintiff; notice of hearing Feb. 13th, documents annexed, and four subpoenas then returnable.

Annexed to Exhibit XXXII:

XXVI. (a) Subpoena to James Dugan, Recording Secretary, Precision Lodge 797; one of four returnable Feb. 13.

(b) Envelope enclosing same.

XXVII. (a) Subpoena to Frank J. Alexander, President, Lodge 797.

(b) Envelope enclosing same.

XXVIII. (a) Subpoena to Mr. Henry E. Kaltun, Business Representative, District No. 15, International Association of Machinists, 7 E. 15th St., New York 3, N.Y.

(b) Envelope enclosing same.

XXIX. (a) Subpoena to Mr. Fred Coonley, International Vice President, International Association of Machinists.

(b) Envelope enclosing same.

XXX. Affidavit and Memorandum of Law, filed by plaintiff in Court Feb. 13, 6 pages; also annexed to Exhibit XXXIV.

XXXI. Affidavit of Service of documents by plaintiff in Court January 28th.

XXXII. Plaintiff's Affidavit of Non-Appearance Under Subpoena; with Exhibits XXVI, etc., annexed.

Affidavit by defendant's Attorney Stephen C. Vladeck, Esq., filed in Court at hearing Feb. 13th.

XXXIII. Affidavit and Motion For Temporary Restraining Order.

Order moved by Exhibit XXXIII.

Memorandum denying order, endorsed by Hon. Edward Weinfeld, U.S.D.J., February 21, 1956, on Exhibit XXXIII, order annexed.

XXXIV. Affidavit and Motion For Injunction; with Exhibits XVI and XXX annexed.

XXXV. Defendant's Strike Bulletin No. 14, "A Proposed Settlement of the Kollsman Strike", annexed to Exhibit XXXIV.

Affidavit by Defendant's Attorney, Arthur L. Galub, Esq., Feb. 24, 1958.

Affidavit and Notice of Amended Complaint, hereby designated Exhibit XXXVI; annexed to Exhibit XXXVIII.

IAM, Pl. Exhibit XXXX

Answer by defendant, with duplicate Exhibits A and B.

Defendant's Affidavit, by Mr. Henry Kaltun, Feb. 21, 1958.

XXXIX. Affidavit and Motion For Stay Pending Petition to Supreme Court

Proposed order annexed to XXXIX.

XXXX. Notice of Record, with Affidavit.

XXXXI. Plaintiff's Applications at hearing March 6, 1958.

(s) Henry Merrit. Farnum,
Plaintiff

(Jurat dated March 6, 1958)

STATE OF NEW YORK )
COUNTY OF NEW YORK ) SS:

Henry Kaltun, being duly sworn, deposes and says:

I am a Business Representative of District Lodge No. 15 of the International Association of Machinists, AFL-CIO. and I am fully familiar with all the facts pertaining to the plaintiff's alleged cause of action....

(Page 2)....This is the meeting to which the plaintiff refers in his papers as having taken place on Sunday, January 19th, 1958 at Jamaica Armory, Jamaica, Long Island, New York....

(Page 3)....After the meeting was called to order by the President, Frank Alexander, he turned the chair over to me to make my report and conduct the discussion of the then current status of the relationship between Kollsman and the Union. I informed the membership of the latest Kollsman proposal and then stated that the Negotiating Committee recommended a rejection of the proposal but a further extension of the negotiation period through January 31st, 1958, during which time all would remain at work. Several men took the floor to discuss our recommendation. The gist of their statements and the sense of the thousands present were an approval of our recommendation to reject the Kollsman proposal, but that further negotiations continue only through Tuesday, January 21st, 1958, and in the event a mutually satisfactory agreement had not been reached by then, the strike should commence on the following morning.

...In the midst of the pertinent

discussion which was taking place, the plaintiff sought permission to speak and, of course, I immediately granted it. Instead of taking one of the floor microphones, he came up to the podium and used the one there; no effort was made to prevent this. To the surprise of everyone, the plaintiff completely ignored the topic under discussion and commenced to give the meeting a philosophical lecture about the advantages of a bonus or profit-sharing plan. He then moved that we substitute a bonus or profit-sharing plan in place of the Union proposals which had been approved by the membership months before and on which negotiations had been carried on for months. No one in the entire audience seconded his motion, so that even had it been made properly, it could not have been entertained. (Page 8, Rule 5, of Exhibit "A", annexed hereto and made a part hereof, consisting of the Constitution and By-Laws of Precision Lodge 797). Several shouts went up from the floor during this time that he was out of order. I personally informed him that he was out of order and must confine himself to the question before the membership. He completely ignored me and kept on talking in the same vein. Even shouts from the floor that he either sit down or "stick to the point" failed to deter him, but he continued on. I interrupted at least four or five times to tell him that he was out of order, and finally after about five minutes when I realized that he would continue to disregard orderly procedure and decorum, I reached out to take the microphone from him. As I did this, he shoved me aside, whereupon several members came up to the podium and led him away. As far as I know, he remained at the meeting but kept silent and made no attempt to appeal my ruling declaring him out of order. This, in essence, is what actually transpired at the meeting upon which plaintiff

predicates his right to seek injunctive and declaratory relief.

I might state that the thousands of persons present at the meeting did accept the recommendation of the Negotiating Committee to reject the latest Kollsman proposal, but turned down the Negotiating Committee's recommendation for a continuation of negotiations through January. In place of the latter, the membership granted the Negotiating Committee an additional forty-eight hours to either reach an acceptable agreement or commence the strike. We were unable to reach an agreement, so that the strike commenced at 6:00 A.M. on the morning of January 22nd, 1958 and is still in progress.

There is literally no merit whatsoever to the plaintiff's claim for relief, for he was offered full opportunity to speak on the issue under discussion at the meeting. He completely defied ordinary parliamentary procedure and ignored the "Rules of Order" for the conduct of meeting as contained in the Constitution and By-Laws of his Lodge 797.

Rule 11, among other things, provides that "Each member when speaking shall confine himself to the question under debate,". Rule 13 provides that "If a member, while speaking, be called to order he shall take his seat until the point of order is decided, when, if declared in order, he may proceed." Rules 14 and 15 provide an immediate and effective method of appeal for anyone aggrieved by the ruling of the chair. Plaintiff, however, took no such appeal, completely ignored his Lodge's Rules of Order and continued to speak even though he had been called to order several times. The very attempt by plaintiff to make his motion while another

question was on the floor violated Rule 18. I respectfully refer to Exhibit "A", pages 9, 10 and 11. (They are identical with provisions contained in the International's Constitution, pages 50 and 51 of Exhibit "B", likewise annexed hereto and made a part hereof).

Thus it can be seen that solely on the facts and merits plaintiff is not entitled to any of the relief he seeks. Furthermore, any civil action by the plaintiff at this time is untimely. We must bear in mind that he is a member of the defendant and is contractually bound by all of the terms and conditions of its constitution. The defendant's Constitution provides extensive provisions and elaborate trial procedure to protect all Local Lodges, District Lodges, officers and members against any improper conduct by any of them. (Exhibit "B", pages 77 et seq., Article "K"). The plaintiff not only made no effort to follow the procedure set forth there but in violation of that Constitution he has brought this action without first exhausting his remedies thereunder. I refer the Court to the last sentence on page 86 of Exhibit "B", reading as follows: "In no case shall any Local Lodge, District Lodge, officer, representative, or member thereof, appeal to the civil courts for redress until after having exhausted all rights of appeal under this Constitution."

....

(s) Henry Kaltun

(Jurat dated January 27, 1958)

STATE OF NEW YORK )
COUNTY OF NEW YORK ) SS:

FRANK ALEXANDER, being duly sworn, deposes and says:

I am the President of Precision Lodge No. 797, International Association of Machinists, AFL-CIO and I make this affidavit in opposition to the motion of the plaintiff.

The plaintiff is a member of the defendant Union and its local known as Precision Lodge No. 797.

I have read the affidavit of Henry Kaltun, annexed hereto, and I unequivocally state to this Court that all of the statements therein contained are true and accurate. I was personally present at the podium at all the times set forth in Mr. Kaltun's affidavit and witnessed the happenings he relates.

WHEREFORE, I respectfully pray that plaintiff's motion be denied in all respects.

(s) Frank Alexander

(Jurat dated January 27, 1958)

IAM, Def. Exhibit B, Art. J

# CONSTITUTION *

## OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS

Effective January 1, 1957

## ARTICLE J, DUTIES OF MEMBERS

### Overtime

Sec. 5. Members shall discourage the working of overtime. (20-21)

### Piecework, Two Machines and Premium Systems

Sec. 6. In shops where it is not now a practice, no member is permitted to accept piecework, operate more than one machine, or accept employment under the premium, merit, task, or contract system. Members found guilty of advocating or encouraging any of these systems in shops where they are not now in operation shall be liable to expulsion. (22-28)

### Introduction of Unqualified Persons

Sec. 7. Members who introduce into the trade any person other than a member of the I.A.M. shall be heavily fined for the first offense and expelled for the second offense. This Sec. shall not be construed to refer to apprentices properly indentured. (29-33)

*NOTE: line numbers on original pages, in parentheses herein.

ARTICLE K, CODE

Improper Conduct of Local Lodges, District Lodges, and Members Thereof

Sec. 1. The following actions or omissions shall constitute misconduct by a L.L. or D.L. which shall warrant suspension or revocation of the charter thereof as the evidence may warrant: (16-19)

....

Failure to perform duties as provided in this Constitution or violation of any of the provisions of this Constitution. (26-28)

Insubordination with respect to valid orders or directives of officers and/or the convention of the G.L. of the I.A.M. (29-31)

Any conduct unbecoming a L.L. or D.L. which is detrimental to the best interests of the I.A.M. (32-33)

....

Improper Conduct of a Member

Sec. 3....Refusal or failure to perform any duty or obligation imposed by this Constitution; the established policies of the I.A.M.; the valid decisions and directives of any officer or officers thereof; or, the valid decisions of the E.C. or the G.L. convention. (27-31)

Attempting, inaugurating, or encouraging secession from the I.A.M., or advocating or encouraging or attempting to inaugurate any dual labor movement.... (32-34)

Accepting employment in any capacity in an establishment where a strike or lockout exists as recognized under this Constitution, without permission. (40-42)

Sec. 3, Continued.

Any other conduct unbecoming a member of the I.A.M. (43-44)

....

Evidence

Sec. 10. Both the plaintiff and the defendant shall have the privilege of presenting evidence and being represented either in person or by attorney (the attorney being a member of the I.A.M.) (29-35)

....

Trial Procedure

Sec. 11....

3. Clear the trial chamber of all people except the trial committee, the trial reporter (who need not be a member of the I.A.M.), the plaintiff and his attorney, the defendant and his attorney, and a representative of the G.L., if in attendance. (38, 39, and 1-3)

....

Appeal from Decision of L.L. or D.L.

Sec. 14....

No party to the appeal shall have a right to appear in person before the I.P. However, the I.P., if he deems it necessary or desirable, in connection with his consideration of the appeal, may accord such a privilege.... (4-8)

Appeal from Decision of I. P.

Sec. 13....No party to the appeal shall have a right to appear in person before the E.C. However, the E.C., if it deems it necessary or desirable in connection with and consideration of the appeal, may accord such a privilege.... (28-32)

Appeal from Decision of E.C.

Sec. 16. An appeal may be made from a decision of the E.C. by any party in the proceedings before the E.C. to the G.L. convention, or to the membership at large by submission thereof to the referendum as provided in Art. XXIII....The Appeals and Grievance Committee shall, upon timely request, hear both parties to the appeal in person. However, no party to the appeal shall have a right to appear in person before the convention. (1-5, and 18-21)

...In no case shall any L.L., D.L., officer, representative, or member thereof, appeal to the civil courts for redress until after having exhausted all rights of appeal under this Constitution. (43-46)

Abbreviations (page x)

L.L. Local Lodge
D.L. District Lodge
G.L. Grand Lodge of the International Association of Machinists
I.P. International President
E.C. Executive Council

CONSTITUTION AND BY-LAWS

Precision Lodge No. 797
District No. 15
International Association of Machinists
Effective June, 1957

Rules of Order

....

Rule 13. If a member, while speaking, be called to order he shall take his seat until the point of order is decided, when, if declared in order, he may proceed.

Rule 14. If any member shall feel himself personally aggrieved by a decision of the chair, he may appeal to the body from the decision.

Rule 15. When an appeal is made from the decision of the chair the Vice-President shall then act as chairman; said appeal shall then be stated by the chairman to the meeting in these words: "Shall the decision of the chair be sustained as the decision of this Lodge?" The member then will have the right to state the grounds of appeal, and the chair will give reasons for his decision; thereupon the members will proceed to vote on the appeal without further debate, and it shall require a majority to sustain an appeal.

....

Rule 17. The presiding officer shall not speak on any subject unless he retires from the chair, except on points of order, and in case of a tie he shall have the casting vote.

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

....

NINTH: That heretofore and on or about January 19th, 1958, Precision Lodge No. 797 of defendant held a shop meeting at which plaintiff attended.

TENTH: That plaintiff during the course of such shop meeting, while he was speaking, was called to order, but refused to take his seat until the said point of order was decided.

....

TWELFTH: That plaintiff failed and refused to appeal to the meeting from the decision calling him out of order.

THIRTEENTH: That by failing to so appeal, plaintiff has waived any right or claim that he was improperly called out of order.

....

ORDER

Upon hearing of Plaintiff's Motion for Restraining Order pending Hearing on January 21, 1958, it is ORDERED

1. (Note: endorsed "W.B.H., U.S.D.J."; Ed.)

That hearing on the complaint in the above action, whereby plaintiff applies for interlocutory and permanent injunctions, declaratory and other relief to which he, and all persons similarly situated, may be entitled, is hereby set for 10:30 A.M. o'clock in the forenoon on January 28th, 1958, at Room 506, United States Court House, Foley Square, New York, New York; or as soon thereafter as counsel may be heard.

2. (Note: deleted with endorsement, "FRCP Rule 65-c" and "W.B.H., U.S.D.J."; Ed.)

It is further ordered, that to prevent irreparable loss, including irretrievable loss of time, and the possible damaging effect of a strike upon teamwork and the necessary bases of plaintiff's proposals, that defendant is hereby temporarily restrained pending said hearing, from any strike against the Kollsman Instrument Company, and from interfering with plaintiff's right to be heard on his proposal set forth in Plaintiff's Exhibit II.

....

(s) William B. Herlands
United States District Judge

January 21, 1958

Endorsement on moving papers, after hearing on notice:

"Motion denied in all respects--So ordered--

(s) William B. Herlands,
U.S.D.J.

January 28, 1958."

Henry Merritt Farnum,

Plaintiff

&

v.

International Association of Machinists,

Kollsman Instrument Company,

Federal Mediation and Conciliation Service,

National Labor Relations Board, and

New York State Mediation Board,

Defendants

ORDER

Upon hearing of plaintiff's Motion for Amendment, Joinder, Injunction and Balloting, on February 6, 1958 it is ORDERED:

1. Leave is granted to plaintiff to amend the complaint by the amendment attached;

2. Leave is granted to plaintiff to summon and join as defendants the four parties named in the caption above, in addition to the International Association of Machinists;

3. It is further ordered that defendants show cause why a three-judge Court should not be convened, to hear plaintiff's motion for injunction and order for secret ballot by employees on the Company's last offer, at 10:00 A.M. in the forenoon on February 11th, 1958, at Room 506, United States Court House, Foley Square, New York, New York; or as soon

thereafter as counsel may be heard.

Service by certified mail on February 7, 1958, of this order and documents attached for service upon each joined party, will be sufficient.

United States District Judge

Endorsement:

"Not Signed--Does not comply with the Rules or the Statutes.

(s) Archie O. Dawson"

ORDER

(Caption same as Feb. 6th order)

Upon hearing of plaintiff's Motion for Amendment, Joinder, Injunction and Balloting, on February 13, 1958, it is ORDERED:

1. Leave is granted to plaintiff to amend the complaint by the amendment comprising plaintiff's Exhibit X;
(Endorsed: "Granted")

2. Leave is granted to plaintiff to join as defendants the four parties named in the caption above, in addition to the International Association of Machinists;
(Endorsed: "Denied")

3. Hearing on the complaint as amended, before a three-judge Court, to hear plaintiff's motion for injunction and order for secret ballot on the Company's last offer, by their employees, is hereby set for _____M. in the ____noon on February ___, 1958 at _____', United States Court House, Foley Square, New York, New York; or as soon thereafter as counsel may be heard.
(Endorsed: "Denied")

Service by registered or certified mail of this order on February __, 1958, will be sufficient.

PLAINTIFF'S EXHIBIT XII _____ _____, USDJ

Endorsement: "Decided as shown on the motion paper. Item 1 allowed. Items 2 and 3 are denied. So ordered. (s) Archie O. Dawson, USDJ, Feb. 13, 1958"

ORDER

Upon hearing on February __, 1958 of plaintiff's Motion For Temporary Restraining Order, it is ORDERED:

The defendant is hereby enjoined until hearing ~~March 3~~, February 25, 1958, or any adjournment thereof, from entering into, ratifying, validating or enforcing any contract with Kollsman Instrument Company, 80-08 45th Avenue, Elmhurst 73, New York, which includes any direct or indirect requirement, as a condition of employment by the Company, that the membership of the defendant is subject to, or bound by, the Constitution of the International Association of Machinists, defendant's Exhibit B; or any contract negotiated without hearing the proposals of plaintiff, evaluating the issues thereof, and deciding those issues in a democratic manner.

Service of this order _____ on or before February __, 1958, will be sufficient.

_____
United States District Judge

Endorsement:

"The papers fail to indicate any basis for the issuance of a temporary restraining order and accordingly the application is denied.

February 21, 1958.

(s) Edward Weinfeld,
U.S.D.J."

Hearing on notice of plaintiff's Affidavit and Motion For Injunction, was held on February 26, 1958. That Motion, plaintiff's Exhibit XXXIV, is reprinted supra, pp. B-36 to B-38 (IAM).

Endorsements thereon follow.

February 26, 1958:

"Motion granted as indicated by the argument permitting amendment of complaint. Settle order on notice. Decision reserved on main motion.

(s) Edward Weinfeld,
U.S.D.J."

Dated March 1, 1958,
filed March 3:

"As to the balance of the motion, after a careful review of the papers, the Court finds thare is no basis for the grant of the extraordinary injunctive relief and other relief requested. Moreover, it does not appear plaintiff has exhausted his remedies within the Union in accordance with the procedure set up by the Union Constitution and by-laws.

(s) Edward Weinfeld,
U.S.D.J."

OPINION # 24190

Dimoch, D.J.

Defendant has moved for summary judgment dismissing the complaint.

Plaintiff moves for a stay pending a projected application by him to the United States Supreme Court for a writ of mandamus by which he will, in effect, seek review of previous orders of this court denying appointment of a three-judge court. Even had such an application actually been made to the Supreme Court it would not, in my opinion, have possessed sufficient merit to warrant a stay of proceedings in the District Court. The motion for a stay is therefore denied.

The action is one brought by a member of defendant labor union in which he complains that, at a union meeting where a strike settlement was discussed, he was deprived of his rights under the United States Constitution to make certain arguments. The strike has since been settled and the terms of a new contract agreed upon by a majority vote. Plaintiff nevertheless seeks by an amended complaint interlocutory and permanent injunctions against the practices set forth in this complaint "And declaratory relief against such practices in the future."

At the moment of the settlement of the strike this court became powerless to give plaintiff an opportunity to be heard by the union on that question and this case became moot. It is true that even where illegal acts have ceased a court of equity will sometimes enjoin their

repetition. That course is followed, however, only where there is likelihood of repetition. See Securities and Exchange Commission v. Otis & Co., D.C.N.D.O. E.D., 18 F.Supp. 100, 102, affd. sub nom. Otis & Co. v. Securities and Exchange Commission, 6 Cir., 106 F. 2d 579. It would be fantastic to think that the situation will ever arise where plaintiff seeks to be heard by the union on the same argument which he sought to interpose on the question of a pending strike settlement. He is not entitled to an injunction.

His plea for a declaratory judgment must be disposed of in much the same way. There must be an "actual controversy" between the parties to warrant a declaratory judgment. 28 U.S.C. sec. 2201. To be actual the controversy must be one which in fact exists rather than one which may occur. San Francisco Lodge No. 28, etc. v. Forrestal, D.C.N.D. Cal., S.D., 58 F. Supp. 466. There is no existing controversy here.

The motion for summary judgment dismissing the complaint is granted.

Dated: March 17, 1958.

(s) E. J. Dimoch,
United States
District Judge